(17,513.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 133.

JOEL PARKER WHITNEY AND FRANKLIN H. STORY, APPELLANTS,

vs.

THE UNITED STATES, ELOISA BERGERE, ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

INDEX.

	Original.	Print.
Caption	*a*	1
Petition	2	1
Plat of the Antonio Sandoval grant	13½	7
Summons	15	8
Proof of service	16	9
Answer of the United States	18	9
Answer of Bergere *et al.*	20	10
Amended answer of the United States	30	15
Minute entry as to trial	39	23
Evidence	40	23
Exhibits offered	40	23
Testimony of Wm. M. Tipton	40	24
Francisco Delgado	44	26
Wm. M. Tipton (recalled)	46	27
Plaintiffs rest	61	36
Exhibits offered	61	36
Stenographer's certificate	67	40
Plaintiffs' Exhibit 1—Petition of Gervacio Noland for patent	68	40
A—Original grant papers	70	41
Translation	75	44
5—Transfer to Noland in Spanish	80	46
Translation	82	47

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 1, 1900.

	Original.	Print
Plaintiffs' Exhibit 6—Amended petition of Noland's widow for patent	84	48
7—Statement of Pablo Delgado	86	49
8—Lease, Nolan to Beach, January 1, 1850	87	50
9—Opinion of surveyor general	89	51
B—Deed, Nolans to Whitney, September 23, 1880	91	52
Deed, Whitney to Story, Nov. 6, 1880	97	55
C—Testimony of Ira M. Bond	100	57
Defendants' Exhibit A—Report of surveyor general, July 21, 1886	105	62
B—Report of the Commissioner of the General Land Office, Dec. 17, 1886	113	66
C—Certified copy of petition and grant in Spanish	121	71
Translation	127	74
D—Petition of Sandoval to surveyor general	134	79
E—Petition of Sandoval in Spanish, &c	136	80
Translation	140	82
F—Act to confirm certain private land claims, June 21, 1860	145	85
G—Petition of the Nolans to surveyor general	146	85
H—Petition of Nolain to governor in Spanish	148	86
I—Endorsement of Armijo in Spanish	148	87
J—Endorsement of Archuleta in Spanish	149	87
K—Petition of Nolan in Spanish	149	87
L—Order of justice of peace in Spanish	150	88
H—Translation of Spanish paper	152	89
I—Translation of Spanish paper	153	89
J—Translation of Spanish paper	153	90
K—Translation of Spanish paper	153	90
L—Translation of Spanish paper	154	91
M—Opinion of surveyor general in Nolan *vs.* United States	157	92
N—Act to confirm the title of the heirs of Gervacio Nolan, July 1, 1870	160	94
Opinion	163	95
Concurring opinion	174	102
Hearing and submission	190	112
Decree	190	112
Petition for appeal	192	113
Order allowing appeal	193	114
Bond on appeal	194	114
Citation and service	195	115
Clerk's certificate	197	116

a JOEL PARKER WHITNEY and FRANKLIN H. STORY, Appellants,
vs.
UNITED STATES OF AMERICA.

Appeal from the court of private land claims.

1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the first day of March, A. D. 1893, there was filed in the office of the clerk of the court of private claims, at the city of Santa Fé, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 In the Court of Private Land Claims of the United States.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Petitioners,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. BERGERE, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Respondents.

To the Honorable Joseph R. Reed, chief justice of the court of private land claims of the United States:

The undersigned, Joel Parker Whitney and Franklin H. Story, by this their petition complaining of the United States of America, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, respondents, show unto the said court as follows, viz:

On the seventh day of December, A. D. 1845, Antonio Sandoval, a Mexican citizen of high distinction, who had theretofore for many years faithfully served the Republic of Mexico as a civil and military officer, and also greatly aided the said Republic by loans and advances of large sums of money out of his private estate,
3 for which the said Republic was then his debtor, presented to Manuel Armijo, then the governor of New Mexico, and then authorized and commissioned by the supreme executive of the said Republic and by the laws of the said Republic to make grants, sales, and other dispositions of its public domain, a petition in writing signed by him, the said Antonio Sandoval, and dated on the fifth day of the same month, whereby he prayed the said governor in the name of the supreme authority of the said Republic to grant him in possession *integram* the Salt Lakes tract, assigning as boundaries on the north a line one league north of the Berrendo spring (the said spring being within the tract so solicited), on the south a line one league south of the Salt lakes, on the east the little hills of the Pedernal, and on the west the waters of the Mesteñas, and by which petition he represented to the said governor that the tract of land so

solicited was vacant and in a condition of mortmain, and that the grant so solicited would be without prejudice to any third party, and he further represented that he desired to use the said tract of land for the pasture of his live stock, and he further prayed that the said grant, if made, should be made free and exempt from tax.

With the said petition the said Antonio Sandoval submitted to the said governor for his consideration an official certificate of Jose Serafin Ramirez y Casanoba, comptroller of the departmental treasury of New Mexico and acting treasurer of the same, dated on the sixth day of the same month, whereby the said comptroller and acting treasurer certified that during the period of forty years (as appeared from records of the treasury) the said Antonio Sandoval had been serving the nation as a military and civil officer, and also
that he had loaned numerous sums of money to the treasury
4 of the nation without receiving one-half real interest, and
that there were then large sums due him, as appeared from the entries in the office of the said comptroller and treasurer and the evidence in possession of the said Antonio Sandoval, on account of salaries and loans.

The said governor, in consideration of the said petition and certificate and of the facts therein set forth, made, on the seventh day of December, A. D. 1845, in the name of the supreme government of the Mexican nation, a grant to the said Antonio Sandoval of the land solicited by the said petition, with all the dimensions and pasture lands so asked for and free and exempt from all tax or tribute, and the said governor, in his granting instrument or decree by which the said grant was so made, recited that the government was convinced of the valuable services the said Antonio Sandoval had rendered and was then rendering to the country, as well during the time referred to by him in his said petition as also during the six years that he served in the administration of the prefecture of the second district, with the salary of $1,500, of which not even a half real had been paid to him, the sum due him amounting to $9,000, and he also adjudged and recited that the statements in the said petition were true, and he also declared that the said grant was a just title.

Thereupon, under the direction of the said governor and in conformity with the then existing laws, usages, and customs of the said Republic, the proper judicial officer having jurisdiction in that behalf, namely, Jose Baca y Ortiz, justice of the peace of Real del Oro, delivered to the said Antonio Sandoval juridical seisin and possession of the said tract of land on the fifteenth day of Decem-
5 ber, A. D. 1845, in obedience to the said decree—that is to
say, the said judicial officer, in execution of the said decree, proceeded to the said granted tract of land in company with his two attending witnesses to mark the limits and boundaries of the said tract, and the said grantee being represented on the ground by his agent in that behalf, Juan Antonio Aragon, the said judicial officer then and there exhibited to the said grantee (by his said agent) the said petition and enjoined the said grantee for the greater security of his interest to maintain a force of men with good arms to be ready

for an emergency, and thereupon the said judicial officer, with the ceremonies customary in such cases, inducted the said grantee (by his said agent) into full, quiet, and peaceable possession of the said granted land, designating to him the boundaries thereof as follows:

On the north one league from the Berrendo spring, the said spring being included in the possession; on the south one league from the Salt lakes, the said lakes also being so included; on the east the little hills of the Pedernal with the range thereof, and on the west the water of the Mesteñas.

Having so delivered seisin and possession of the said granted land, the said judicial officer thereupon, for testimony thereof in all time to come, executed and delivered to the said grantee an act of juridical possession in the premises in due form of law that it might serve him as a formal title.

Duplicate copies in both Spanish and English of the said petition, certificate, granting decree, and act of juridical possession are filed herewith, the originals of all and singular the said instruments being now in the archives of the Government of the United
6 States of America, kept in the office of the surveyor general for New Mexico, at the city of Santa Fé, New Mexico.

The said granted tract of land is all situate in the county of Valencia, in the Territory of New Mexico, and it has been surveyed, by authority of the United States, as a private land claim, and a map thereof as so surveyed made, which map is now kept among the archives and in the office last aforesaid. A copy of the said map, correctly showing the extent and boundaries of the said land grant, is filed herewith.

The area of the said granted land is four hundred and fifteen thousand and thirty-six acres and fifty-six one-hundredths of an acre.

The said grantee, Antonio Sandoval, entered upon, possessed, occupied, improved, enjoyed, and claimed all and singular the said tract of land, holding and claiming the same in fee-simple absolute and maintaining thereon an armed force adequate to the defence thereof, under and by virtue of the said grant, and peaceably, openly, continuously, uninterruptedly, and exclusively, from the date of the said act of juridical possession, to wit, the fifteenth day of December, A. D. 1845, until the eighth day of July, A. D. 1848, when the said Antonio Sandoval conveyed the same by an instrument in writing in due form to his nephew, Gervacio Nolan, to whom as his grantee he thereupon transferred and delivered full seisin and possession of the same and every part thereof. The said Gervacio Nolan remained in the peaceable, open, continuous, uninterrupted, and exclusive possession and occupation of all and singular the said granted land, claiming it in fee-simple absolute under and by virtue of the said grant and conveyance until his death, which occurred, your petitioners aver on their information and belief, in the year
7 eighteen hundred and fifty-eight, whereupon the said granted land descended to his descendants, his heirs-at-law, from whom your petitioner Joel Parker Whitney purchased all and

singular the said granted tract of land on the twenty-third day of September, A. D. 1880, by deed of conveyance dated on the same day, executed by Fernando Nolan and others, heirs-at-law aforesaid, and recorded in the office of the probate clerk and *ex officio* recorder of the county of Valencia, as aforesaid, in Book A No. 4 of Deeds, pages 485 to 489, after which, by deed of the said Joel Parker Whitney, dated on the sixth day of November, A. D. 1880, and recorded in the said recorder's office, in Book A No. 4 of Deeds, on pages 498, 499, and 500, one undivided half part of the said granted land was conveyed to your petitioner Franklin H. Story; by virtue of all which conveyances your petitioners are the present owners and claimants of the said land.

On the twelfth day of July, A. D. 1855, the said Gervacio Nolan (who was sometimes known by the name of Gervais Nolan) presented to the surveyor general for New Mexico due notice of his said claim to the said granted land and a petition for the confirmation of the said grant, in which petition he expressly notified and informed the said surveyor general that the said Governor Manuel Armijo granted the said land to the said Antonio Sandoval by virtue of the authority in him vested by the government of Mexico, as will appear by the collection of statutes and decrees of the said government, and also by communications addressed to the aforesaid governor by the authorities of the aforesaid government of Mexico, and that the said communications are or should be deposited in the archives of the Territory of New Mexico, and to which he made reference.

8 The said surveyor general failed to act upon the said petition of the said Gervacio Nolan, but after the death of the latter his widow and heirs-at-law renewed the said application by their petition for confirmation of the said land grant, addressed to the said surveyor general, which petition last mentioned was prepared and presented in behalf of the said widow and heirs by Theodore D. Wheaton, Esq., who was then the United States attorney for New Mexico and familiar with the archives of the United States then kept in the said city of Santa Fé, and in the said petition the said Wheaton, as attorney for the said widow and heirs, stated, in reference to their said private land claim, "that the said Armijo during the time he was governor, as aforesaid, granted said land by virtue of the authority vested in him by the Mexican government, which authority will appear by the collection of statutes and decrees of the aforesaid government, and also by communications addressed to the aforesaid governor by the authorities of the Mexican government, which said communications are to be found in the archives of the Territory, and to which reference is here made."

In fact, there were in the archives of the Republic of Mexico, kept at Santa Fé aforesaid until the cession of New Mexico to the United States of America, and upon such cession turned over to the custody of the latter sovereignty, and thereupon kept as archives of the same at Santa Fé aforesaid, numerous communications between the supreme executive of the Republic of Mexico and the several governors of New Mexico, and especially the said Manuel Armijo,

directing, instructing, and authorizing the said governors, and especially the said Manuel Armijo, to make grants of the public domain in New Mexico in the name of the supreme government of Mexico, and especially to make the grant aforesaid to the
9 said Antonio Sandoval.

All the archives aforesaid which had been theretofore in the custody, first, of Spain and then of Mexico, at Santa Fé aforesaid, including all the archives and official communications aforesaid relating to the granting authority of the said Manuel Armijo, and also relating to the said Estancia grant, had always been carefully and sacredly preserved from waste, loss, or spoliation by the custodians thereof up to the time of the said cession, and upon the said cession they were all surrendered intact to the custody of the Government of the United States of America, at Santa Fé aforesaid, and thereafter for many years they were carefully preserved at Santa Fé aforesaid, by custodians appointed by the Government last aforesaid, but, at a time several years subsequent to the presentation to the said surveyor general by the said Theodore D. Wheaton of the said petition in behalf of the widow and heirs-at-law of the said Gervacio Nolan, the secretary of the said Territory of New Mexico, a commissioned Federal officer having official custody of the palace, at Santa Fé aforesaid, wherein the said archives had been always theretofore kept, in view of the fact that because of certain alterations then recently made in the said palace by the Government of the United States there was not, in his opinion, left therein sufficient room for the said archives in any more suitable place in the said building, caused the said archives, including the official communications aforesaid and several other material instruments and muniments of title pertaining to the said Estancia grant, to be thrown loosely and carelessly, as being so much rubbish, into an unfinished room in the said palace, where, however, the said archives suffered no immediate material injury or waste until the advent into the said Territory of William A. Pile, as governor thereof, commissioned by the President of the United States, where-
10 upon the said governor, William A. Pile, desiring to use the apartment in which the archives had been so stored by the said secretary for some purpose not connected with his gubernatorial office, and being ignorant of the value of the said archives, and without making any adequate inquiry as to their value or importance, gave instructions to the librarian of the said Territory, Ira M. Bond, to have the said archives removed from the said apartment; whereupon the said librarian, obedient to the said instructions, removed the same into an open outhouse, one of the outbuildings of the said palace, which outhouse was very much exposed and was wholly unfit for the protection of anything of value. Soon after the said archives had been so removed into the said outhouse the said governor, William A. Pile, being ignorant and regardless of the value and importance of the same, gave a portion thereof to the convict prisoners to be used as they might desire, and as to the residue thereof he compelled the said librarian to dispose of the same under a threat of consuming them by fire if they should not

be taken "out of the way;" whereupon by the procurement of the said governor the said residue of the said archives was sold by the said librarian to numerous citizens of Santa Fé, by whom they were used as wrapping papers in trading shops or devoted to other destructive purposes, and thereby the greater part thereof was wholly lost.

In consequence of this wholesale spoliation and destruction of the said archives by Federal officials, as aforesaid, an indignation meeting of prominent citizens of Santa Fé was held in that city on Saturday, the 16th day of April, 1870, to consider the subject of the said outrage, at which meeting a committee to investigate the said sale of the said archives was appointed, consisting of six prominent citizens of the said city, namely, Captain Sena y Baca, Hon.
11 R. H. Tompkins, Hon. José M. Gallegos, Captain Antonio Sena, Samuel Ellison, and Lehman Spiegelberg, and by the efforts of the said meeting and committee many of the said archives, including papers of very great value, both pecuniarily and historically, were recovered and restored to the custody of the government, which recovered and restored archives are now part of the existing archives in charge of the said surveyor general; but your petitioners aver upon their information and belief that all the archives, including the official communications aforesaid, relating to the said Estancia grant and to the authority of Manuel Armijo, the said governor, to make the same, as the ministerial agent of the supreme government of the Republic of Mexico, were lost and destroyed by the said negligent conduct of the respondent The United States of America, except only the said petition of Antonio Sandoval, the said certificate of the comptroller and treasurer, the said granting decree, the said act of juridical possession, and the said subsequent proceedings.

And your petitioners, in consequence of the said spoliation, destruction, and loss of the said archives, are unable at present to state more specifically or definitely the contents of such thereof as relate to the said Estancia grant.

All conditions precedent and subsequent to the said grant at any time incumbent upon the said grantee, Antonio Sandoval, have been fully performed and discharged.

Your petitioners are in actual occupation and possession, under and by virtue of the said grant and their said acquisition thereof, of all and singular the said granted tract of land, except a comparatively small part thereof now adversely held and claimed by the respondents Eloisa Bergere and A. M. Bergere, her husband, as your petitioners are informed and believe, and the only persons claiming the said tract of land or any part thereof adverse to your peti-
12 tioners and without their lease or permission are, to the best of your petitioners' knowledge, information, and belief, the respondents Eloisa L. Bergere and A. M. Bergere, her husband (claiming for themselves and others whom your petitioners are unable more specifically to describe); Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan.

Your petitioners claim the said Estancia land grant as a perfect

FOLD OUT IS TOO LARGE TO BE FILMED

itle vested in them as tenants in common in fee-simple absolute, and they aver that the said Estancia grant by them so claimed was a complete and perfect title before and at the time of the cession of New Mexico to the United States.

The said private land claim has not heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to any authorities constituted by law for the adjustment of land titles within the limits of the territory acquired by the United States from Mexico, or been by any such authorities reported on favorably or recommended for confirmation or authorized to be surveyed except only that, having been submitted, as aforesaid, to the said surveyor general, the same was examined, considered, and approved by that official (Hon. James K. Proudfit) and recommended to Congress for confirmation in and by his report (No. 70) to Congress, dated January 4, 1873, and thereafter the said granted tract of land was surveyed by direction of the said surveyor, and the survey, plat, and field-notes in the premises were approved by him February 20, 1878, and subsequently Hon. George W. Julian, surveyor general, and Hon. William A. J. Sparks, Commissioner of the General Land Office, promulgated adverse opinions on the said private land claim; but your petitioners are advised

13 by counsel and believe the two opinions last aforesaid were not promulgated within the competency or jurisdiction of the two officials last above named or of either thereof.

To the end that the said Estancia land grant may be confirmed, surveyed, and patented to your petitioners, they pray that the validity of their said title and claim and of the said grant may be inquired into and decided by this honorable court, and that they may have all the relief in the premises which the said court is competent to afford and decree by virtue of the act of Congress under which it is organized.

JOEL PARKER WHITNEY,
FRANKLIN H. STORY, *Petitioners.*

JOHN H. KNAEBEL,
Attorney for Petitioners.

(Here follows map marked page 13½.)

14 And be it further remembered that, to wit, on the 24th day of March, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

15 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

In the U. S. Court of Private Land Claims.

JOEL PARKER WHITNEY ET AL., Plaintiff-, *versus* UNITED STATES, Defendant. } Petition Filed in the Clerk's Office this 1st Day of March, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the United States before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by Joel Parker Whitney *et al.*, plaintiff-, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court, within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff- will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at [SEAL.] the city of Santa Fé, in said district, this 24th day of March, A. D. 1893, and of the Independence of the United States the 117 year.

JAMES H. REEDER, *Clerk.*
By IRENEO L. CHAVES,
Deputy Clerk.

16 [Endorsed:] File 3. Gen. No., 152. U. S. court of private land claims, district of New Mexico. Joel Parker Whitney, plaintiff, *versus* United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. John H. Knaebel, of Denver, attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

APRIL 1ST, A. D. 1893.

I hereby certify that I received the within writ on the 1st day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S.

This writ therefore returned April 21st, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal,*
By SERAPIO ROMERO, *Deputy Marshal.*

Marshal's Fees.

Service, — defendants, at $2.....	$
Mileage, — miles at 6c., going only.....	
Total.....	$4.00

Paid by —— ——.

Served on me this the 1 day of April, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

17 And be it further remembered that thereafter, to wit, on the 29th day of December, 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

18 UNITED STATES OF AMERICA, ss:

In the Court of Private Land Claims, Santa Fé District, August Term, 1896.

JOEL PARKER WHITNEY ET AL., Complainants, *vs.* UNITED STATES, Defendant. } No. 152. Estancia Grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That as to the several matters and things alleged in said petition defendant has no knowledge or information sufficient to enable it to form a belief as to the truth thereof, and it accordingly denies each and all of said allegations and prays that complainants be put to their proof of the same, as is provided by the act establishing this court.

And this defendant, further answering, denies that the complainant- *is* entitled to the relief or any part thereof in *his* petition alleged and prayed for, and prays the same advantage of this answer as if it had pleaded or demurred to the said petition.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

[Endorsed:] Case No., 152. File No., —. Court of private land claims. Joel Parker Whitney *et al.*, complainant-, *vs.* The United States, defendant. Estancia grant. Answer. Filed in the office of the clerk, court of private land claims, Dec. 29, 1896. Jas. H. Reeder, clerk, by —— ——, deputy. Matt. G. Reynolds, U. S. attorney.

19 And be it further remembered that thereafter, to wit, on the 27th day of October, 1893, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

20 In the Court of Private Land Claims of the United States.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Petitioners, *vs.* THE UNITED STATES OF AMERICA ET AL. } Answer.

Joint and several answer of Eloisa L. Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page B. Otero, Mamie J. O'Bryan, and her husband, H. J. O'Bryan, in right of his wife and not for himself, by J. D. O'Bryan & James Vroom, their solicitors, to the petition of petitioner-.

The respondents say:

That they have no such knowledge as would justify them in either admitting or denying that Antonio Sandoval, on the seventh day of December, 1845, or at any other time, petitioned Manuel Armijo, the then governor of New Mexico, to grant to him in possession *integram* the tract of land in said petition described, or *my* other piece of land, either in whole or in part, now enclosed within the limits of the Antonio Sandoval grant, so called, but pray for strict proof of the same.

They further say that they are without sufficient knowledge to justify an assent to or a denial of the averment of any such official or any certificate of Jose Serafin Ramirez y Cusamba such as that set out in the petition of petitioner-, but pray that strict proof may be made of the same if such proof be in any manner relevant to this case.

They further aver the little want of knowledge upon which to found any assent or denial to the averment in the petition that the said Manuel Armijo, on December 7th, 1845, or at any other time, made a grant to the said Antonio Sandoval of the lands therein mentioned and described, or to the averment that Jose Baca y Ortiz, justice of the peace of Real de Oro, delivered to the said
21 Sandoval juridical possession of the said tract of land, or had any authority so to do, or whether or not he was such justice of the peace, but pray that strict proof be made of the said grant or the said delivery of possession; and these defendants deny that the said Sandoval, under and by virtue of the said grant, peaceably, openly, continuously, uninterruptedly, and exclusively, from the date of the said grant to July 8th, 1845, or for any period of time, occupied the said land, as in the said petition is averred; but these defendants say that if he occupied any portion of the said land the same was a trespass upon the exclusive property and demesne of the grantees through whom these defendants claim title, as hereafter set forth, to the said land.

And these defendants aver that neither the possession of the said Sandoval nor the subsequent possession of his grantees, Gervacio Nolan, if any there were, or his heirs, or of the petitioners in this suit, was of such an open, exclusive, adverse, or continuous a nature as to be the foundation of any right or title, even by prescription or limitation; but that any such possession was openly resisted by the ancestors of these defendants and by their grantors, the heirs of the said Bartolome Baca, as well as by the said Bartolome Baca, and that the immediate ancestors of these defendants, through their agent and employee, Jesus M. Garcis y Chavrs, were in the actual possession of a great part of the land claimed by these petitioners and claiming possession of the whole tract when these petitioners began their suit in ejectment in the district court of the second district of New Mexico for the county of Bernalillo against said employee and agent, and in the appeal of the said case to the supreme court the judgment of the said district court in favor of the petitioners was reversed, the supreme court saying "that there was nothing on the record in the case to show that there was an actual ouster of
22 the plaintiffs (the petitioners herein) by the defendants, the said Garcia, or any intrusion upon their actual possession, there was nothing to confer jurisdiction on the court."

These defendants do not deny that upon July 12th, 1855, Gervacio Nolan, alias Gervais Nolan, presented his petition to the surveyor general of New Mexico for a confirmation, but these defendants say that what he might have alleged in his said petition as to communications addressed to the said governor by the authorities of the government of Mexico conveying power to make such a grant, and that such communications are or should be in the archives of the Territory of New Mexico, were neither facts nor evidence of facts, as these defendants are informed and believe, and as such are improperly inserted in this petition; and these defendants, upon like information and belief, say that another, one Theodore D. Wheaton, as attorney for complainants, may have filed a subsequent petition

in which he said "that the said Armijo, during the time he was governor, as aforesaid, granted said land by virtue of the authority vested in him by the Mexican government, which authority will appear by the collection of statutes and decrees of the aforesaid government, and also by communications addressed to the aforesaid governor by the authorities of the Mexican government, which said communications are to be found in the archives of the Territory," yet that such a statement is neither proof nor evidence of the existence at any time of any of the communications referred to, and is improperly introduced in this petition as evidence of the existence of such papers or as a fact upon which to introduce secondary evidence of their existence.

And as to the part of the petition that recites in detail the traditions that valuable archives in Santa Fé were supposed to be lost or destroyed, and by implication rather than directly that com-
23 munication from the Mexican government authorizing Governor Armijo to make the grant aforesaid to the said Sandoval, these defendants say that they have been informed and believe, and so state the fact to be, that no such communications ever existed, nor was any authority ever given to the said Armijo to make any grant of land in New Mexico, except only such authority as he possessed under and by virtue of the laws of the sovereign constituent congress of the United Mexican States of August 18, 1824, and the regulations of Nov. 21, 1828, and that in particular he was never authorized by any communication from the Mexican government to make the grant of land aforesaid to Antonio Sandoval.

And, further answering, these defendants say that they are advised and believe that the same Antonio Sandoval mentioned and referred to in the said petition on the 28th of November, 1845, only nine days before the pretended grant set out in the petition filed in this case, had granted to him by the same Governor Armijo a certain large tract of land in New Mexico, called Bosque del Apache, exceeding eleven square leagues in extent, and that this grant was claimed by the said Sandoval, and subsequently confirmed by the Congress of the United States and patent issued March 15, 1877, and that under the laws in force at the times of making the said Bosque del Apache grant, or the Sandoval alleged grant, the said subsequent Sandoval grant, so called, mentioned in the petitioners' petition, was invalid and of no force.

And these defendants, having been so advised and believing, say that the said grant mentioned in the said petition was null and void for the further reason that it does not appear to have been made for colonization, but was in payment for past services.

And that furthermore at the time of the alleged grant the land thereby alleged to be granted as set forth in petitioners' petition was not vacant land, but was the private property of Bar-
24 tolomé Baca and those claiming under him.

And these respondents further say that on February 4th, 1819, Bartolome Baca applied to the then governor of the province of New Mexico for a grant of land in said province; which said application was in words and figures following, to wit:

"His excellency the acting governor:

Bartolomé Baca, captain of the volunteer militia company of cavalry of the village of Albuquerque, residing in the jurisdiction of Tome, before you with the greatest respect and subordination, as by law required, represents:

That he has a number of wool-growing stock, horn cattle and horses, without possessing legitimate property on which to place them together under shepherds, cattle-herders and horse-herders, to have charge of them and secure their preservation, they now roving between different places exposed to all the contingencies which their being so scattered causes.

There being vacant on the other side of the Abo mountain a tract of land which they call the Terreon and which embraces on the north to the Buffalo woods (Monte del Cibolo), on the south to the Crow springs (Ojo del Cuervo), on the east to the springs of water which they call the Estancia springs, and on the west to the said Abo mountains, he prays you to be pleased to grant the same in royal possession in exercise of the powers upon you conferred by His Majesty, in order to establish thereon a permanent ranch or hacienda, which he engages to occupy with his stock, sustaining the same with boys, (mosos) servants, and in armed men (armados) who may defend it against the invasions of the enemies without abandoning it; and he will also, should it be to him possible, open land for cultivation, whether they be irrigable or temporals, for the advancement of agriculture, for, although the watering places it contains are sterile and small, he proposes to improve them with reservoirs and by other expedients which will give them all the yields that may be, and he guaranties that it has no present owner whatever, nor has there ever been any known for it. Therefore he requests you to be pleased to grant his petition in conformity with law, commanding the royal justice of his district to give him legal possession with the corresponding documents and other formalities which are required, whereby he will receive favor, grace, and justice. He declares that this is not in dissimulation and what is necessary, etc.

(Signed) BARTOLOMÉ BACA."

San Fernando, February 4, 1819.

And that on July 2nd, 1819, at *the* Santa Fé, the then governor of the said province granted the petition of the said Bartolome Baca in words and figures following, to wit:

"SANTA FÉ, *July 2nd*, 1819.

As he prays for according to law, with the understanding that no injury results to a third party, but rather stock-raising and cultivation will be enhanced under the conditions asked, Mr. José Garcia de la Mora will proceed to give the possession, designated the limits and officiating duly, which being concluded, he will transmit the expediente to this superior office, so that if it be approved the corresponding testimonio may be ordered to be given to the petitioner.

(Signed) MELGARES."

That afterwards, to wit, on September 12th, 1819, the said José de la Mora placed the said Baca in possession of the land granted to him, as aforesaid, in manner following, to wit:

"In execution of the decree of July 2nd, 1819, I, José Garcia
26 de la Mora, the justice commissioned by Lieutenant Colonel Facundo Melgares, governor of the province of New Mexico, proceeded in company with captain of volunteer militia, Bartolomé Baca, to examine the tract he applies for, and knowing that it is wild land and without injury to a third party, I have placed him in possession in the name of the King. I designated to him as his boundaries on the south the Crow springs (Ojo del Cuerbo), following its range (cordillera) to the Chico springs (Ojo del Chico), on the east to the Pederal hill (Zerro del Pederal), on the north the Buffalo springs (Ojo del Cibolo), on the west the summit of the mountain (altura de la Cierra); the said gentleman remaining acquiescent and grateful to the said magistrate for the benefit done, obligating himself to increase with his intelligence, the limited waters which have been donated to him that his herds may subsist, delivering the whole for your approval, for the satisfaction of the fees which may be enclosed upon them."

"Therefore I transmit this to the superior authority, so that, being seen by you, it may determine as it shall seem just."

JOSE GARCIA DE LA MORA.

Witness:

——— ———.

And that afterwards, during the same year, A. D. 1819, the said expediente was by the said justice of the peace transmitted to the then governor of the said province of New Mexico, and by said governor approved, and that thereupon the corresponding testimonio of the grant was then and there delivered to the said Baca, and that he, at that time, entered into the full and lawful possession of the said land, so as aforesaid granted to him, and that the original of the aforesaid grant papers is on file in the office of the surveyor general for New Mexico, and designated as private land claim No. 126, and

further these respondents say that the said Bartolomé Baca
27 and his heirs continued in the lawful, undisturbed, and peaceable possession of the said tract of land, so as aforesaid granted, until A. D. 1845, and that since that time some of his heirs have continued in the possession of the said tract of land, claiming the whole, and that these respondents are now in said possession of the aforesaid grant, claiming the whole in accordance with the boundaries as designated and fully set forth in the act of juridicial possession hereinbefore more fully set forth, and that the fee of said land is now in these your respondents as the legal representatives of the said Baca.

And these respondents, further answering, say that they are in possession of the said Bartolomé Baca grant, claiming the whole, as legal representatives of the said Bartolomé Baca, claiming all and singular the land embraced within the aforesaid boundaries of the said Baca grant by a complete and perfect title, and that their claim

and right in and to and by the said Bartolomé Baca grant is adverse to the entire claim of these petitioners, and that the said pretended grant, as set forth in the petition in this case filed, conflicts with the boundaries and limits of the said Bartolomé Baca grant, and that these respondents have heretofore and before the filing of the petition in this case filed in this said court their petition praying for the confirmation of the said Bartolomé Baca grant as claimed by them.

Wherefore these respondents pray that the petition filed herein may be dismissed as to these respondents.

J. D. O'BRYAN,
JAMES W. VROOM,
Attorneys for Respondents.

28 STATE OF COLORADO, } ss:
County of Arapahoe, }

James W. Vroom, being duly sworn according to law, on his oath says that he is one of the solicitors for the respondents herein: that the allegations in the above answer are true to the best of his knowledge and belief, and that the reason why this oath is made — deponent and not by the respondents herein is because said respondents are not now in the county of Santa Fé, and cannot be conveniently reached for the purpose of making this oath.

(Signed) JAMES W. VROOM.

Subscribed and sworn to before me this 24th day of October, A. D. 1893.

JOHN S. FLOWER,
Notary Public.

[SEAL.]

My commission expires Feb. 7, 1897.

29 And be it further remembered that thereafter, to wit, on the 3d day of October, 1898, an amended answer was filed in the office of the clerk; which said amended answer is in the words and figures following, to wit:

30 In the Court of Private Land Claims, Santa Fé District.

JOEL PARKER WHITNEY ET AL., Plaintiffs, *vs.* UNITED STATES ET AL., Defendants. } No. 152. Estancia Grant.

Amended Answer.

Now comes the United States, by Matt. G. Reynolds, Esq., its attorney, and reserving at all times all manner of benefit or advantage to itself of exception to the many errors and insufficiencies in the petition in said cause, for answer to said petition says:

I.

That it has no knowledge or information sufficient to enable it to form a belief as to whether or not on the 7th day of December,

A. D. 1845, Antonio Sandoval presented to the then governor of New Mexico, Manuel Armijo, a petition in writing wherein he prayed for a grant of the tract of land described in plaintiffs' petition, nor whether, as alleged in plaintiffs' petition, the said Sandoval submitted to the said governor for his consideration an official certificate of Jose Serafin Ramirez y Casanoba, comptroller of the departmental treasury of New Mexico, and acting treasurer of the same, dated on the 6th day of the same month, nor whether said certificate so presented by said Sandoval was of the tenor and effect set forth in plaintiffs' petition.

II.

That it has no information or knowledge sufficient to enable it to form a belief as to whether on the 7th day of December, A. D. 1845, a grant was made of said land to the said Sandoval upon the terms and in the manner set forth in plaintiffs' petition, or whether
31 or not juridical possession was given, as alleged in plaintiffs' petition; but that if a grant were attempted to be made, as alleged in plaintiffs' petition, by Governor Armijo, the same was without warrant or authority of law and in excess of the powers of said Armijo as governor, and therefore void; that said alleged grant, if made as alleged in plaintiffs' petition, was further void because not made in accordance with law or for the purposes provided by the then existing law, but as a reward for services rendered and money advanced, and that even if said alleged grant was made otherwise in conformity with law, it was and is void for the reason that it assumes to convey a vastly greater amount of land than said governor had authority to grant to any one person.

III.

Defendant, further answering, says that the same Antonio Sandoval mentioned and referred to in said alleged grant did, on the 5th day of November, A. D. 1824, petition the authorities of the then Territory of New Mexico for a grant of one square league at the place called Agua Negra, and that on November 19, 1824, a grant of said one square league was made to the said Antonio Sandoval by the territorial deputation of New Mexico, by and with the advice and concurrence of the political chief, Bartolome Baca; that a claim for said grant of land was filed by said Antonio Sandoval on October 21, 1856, before the surveyor general of New Mexico, and that said claim was, on September 17, 1857, approved by said surveyor general and transmitted to Congress, as reported No. 12, for action in the premises; that on June 21, 1860, an act was passed by Congress confirming said grant to said Antonio Sandoval, said act being in words and figures as follows, to wit:

"CHAPTER CLXVII.

"An act to confirm certain private land claims in the Territory of New Mexico.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the private

land claims in the Territory of New Mexico, as recommended for confirmation by the surveyor general of that Territory, in
32 his letter to the Commissioner of the General Land Office of the twelfth of January, eighteen hundred and fifty-eight, designated as numbers one, three, four, six, eight, nine, twelve, fourteen, fifteen, sixteen, seventeen, and eighteen, * * * be, and they are hereby, confirmed" * * *

* * * * * * *

"SEC. 4. And be it further enacted, That the foregoing confirmation shall only be construed as a quitclaim or relinquishment, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

That on the 24th day of November, A. D. 1845, the said Antonio Sandoval presented to the governor of New Mexico a petition for a grant of a certain large tract of land in New Mexico called Bosque del Apache, the same exceeding eleven square leagues in extent; and that on the 28th day of November, A. D. 1845, said grant as prayed for was made to said Antonio Sandoval by Manuel Armijo, the then governor of the department of New Mexico, and juridical possession thereof was given to said Sandoval on the 7th day of March, A. D. 1846. Said petition, grant, and act of possession are in words and figures as follows, to wit:

"Seal third. [SEAL.] One dollar.

"Years one thousand eight hundred and forty-four and eight hundred and forty-five.

"Citizen Antonio Sandoval, resident of the town of Albuquerque, appealing to the upright justice of Your Excellency in the most approved manner prescribed by law and convenient to me, saving such protests as may be useful and necessary, appears and states that, by virtue of having found on the banks of the Del Norte river, at the point called Bosque del Apache, a tract of uncultivated, waste, and unoccupied land, and without injury to any third party, and as I believe said land to be extremely fertile, with an abundance of water and other requisites necessary for the advancement of agriculture, I proceed to impetrate the benevolence of Your Excellency, that, in the name of our sovereign power of the Mexican nation, you be pleased to grant me possession of said land for cultivation and the raising of cattle and sheep, being pleased to grant me also the following boundaries, which are from what is called El Rancho de Las Vacqs (the cow herd), down the river, on both sides to Valverde, that is to say, following the river, and for pasture on the west and southeast, two leagues in each direction, if Your Excellency, under the laws, sees proper to do so. In view of all which I humbly pray and request Your Excellency to be well pleased to comply with my request, by which I will receive that grace and favor which I sue for. I swear that I am not acting through malice. I protest good faith, costs, and whatever may be necessary, &c.

"ANTONIO SANDOVAL.

"Albuquerque, November 24, 1845."

"SANTA FÉ, *November* 28, 1845.

" In consequence of the analogous and meritorious services rendered to the country by Don Antonio Sandoval, not only personally, but *but* also with his property, in forced loans and in other ways, I have seen proper to grant him the lands he solicits in the name of the supreme government of the Mexican nation, and as this government takes into consideration the benefit the said Sandoval has been to the country, and by virtue of the power conferred upon me by law, I invest him with the grant integrum (unconditionally), with the boundaries and commons for pasture he asks for, free from all and exempt from tax. Therefore the petitioner will present himself to the justice of the peace of Socorro, who will place the petitioner in possession and execute the proper deed.

MAN'L ARMIJO."

"At this place and demarcation of San Miguel del Socorro, belonging to the third district of the department of New Mexico, the seventh day of the month of March of the present year, one thousand eight hundred and forty-six, I, Don Vicente Pino, justice of the peace of said demarcation, acting with instrumental and attending witnesses, with whom I act in the well-known absence of public or national notaries, there being none, according to law, in strict compliance with the decree of his excellency, the governor, bearing date the 28th of November last, I proceeded to the land referred to in the foregoing petition made by Don Antonio Sandoval, resident of the town of Albuquerque, and having inspected it with great amount of care and delicacy, I find it vacant, waste, and unoccupied, and without injury to third parties, as stated in the foregoing petition. Having taken these steps, I proceeded to make known to the petitioner, in the presence of the witnesses, the request he made; and in regard to the land being in a dangerous locality and on the frontier, he should provide the people he would keep there with a sufficiency of firearms, or bows and arrows, in order to defend their persons and property, and also that he should comply with all the rules and regulations provided for other colonists. Having acknowledged that he was duly informed of the above conditions, I took him by the hand and walked with him over said lands. He threw stones, pulled up grass, and cried aloud with great joy, saying, 'Long life to the sovereign congress of the Mexican nation,' taking possession quietly and peaceably. And therefore I, the aforesaid justice of the peace, stated in a clear and audible voice that in the name of the sovereign congress of the nation and without injury to its national reverence nor to the third parties the aforesaid grant was made to him, free of everything and exempt from taxation, specifying as boundaries: On the north a monument of stone and mud, which was erected when Socorro was granted, the two possessions being adjoining, the said monument being the dividing line; on the south, following down the course of the river to where it is intersected by the boundaries of Valverde, being also adjoining; on the east, the two leagues mentioned in the foregoing petition, and on the west, two leagues

more, as therein mentioned; and therefore, in compliance with the instructions of his excellency, the governor, and finding the land will not injure any third party, as aforementioned, I placed the said Sandoval in legitimate possession, fully empowered to use it with free, unincumbered, and general administration, as his legitimate property, and in order that this granting deed may have the force and validity required by law I did and do interpose the authority conferred upon me by law, signing with my aforesaid witnesses on the said day, month, and year; to which I certify.

VICENTE PINO.

Attending:
JOSE ANTONIO BACA Y PINO.
PEDRO VIGIL.

Instrumental:
JOSE ANASTACIO TORRES.
JOSE DIONICIO SILVA.
JUAN BEYTA.

Justice's fees, 26 dollars.
I swear it." [RUBRIC.]

34 That the said Antonio Sandoval in the year 1859 presented said grant to the surveyor general of New Mexico for approval, and that said grant was by said surveyor general of New Mexico, on July 20, 1859, approved to the said Antonio Sandoval, and transmitted to Congress as reported number 35 for its action in the premises, and that said grant was confirmed by act of Congress, approved June 21, 1860, to said Antonio Sandoval, the said act of confirmation being in words and figures as follows, to wit:

"CHAPTER CLXVII.

"An act to confirm certain private land claims in the Territory of New Mexico.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. * * *"

* * * * * * *

"SEC. 3. And be it further enacted, That private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor general in his report and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third day of February, eighteen hundred and sixty, and numbered from twenty to thirty-eight both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered twenty-six, in the name of Juan Vigil, which claim numbered twenty-six is not confirmed.

"SEC. 4. And be it further enacted, That the foregoing confirmation shall only be construed as a quitclaim or relinquishment on the part of the United States and shall not affect the adverse rights of any other person or persons whomsoever."

Said grant as surveyed and patented pursuant to said confirmation contains 60,117.30 acres, being 11,292.91 acres in excess of eleven square leagues.

Defendant, further answering, says that under the law of Mexico at the date of the making of the grant to said Antonio Sandoval it was not allowed that more than eleven square leagues of land could be united as a property in a single hand, and that the power and authority of the governor of New Mexico to make a grant to said Antonio Sandoval, even if he had such power, was exhausted by the making of the said Agua Negra and Bosque del Apache grants to said Antonio Sandoval, said two grants being in excess of eleven square leagues, as aforesaid, and that the grant sued for by plaintiffs in this case was and is void, as being
35 an attempt by the governor of New Mexico to convey land in excess of the limit imposed by law.

IV.

Defendant, further answering, admits that said tract of land has been surveyed as a private land claim, as alleged in plaintiffs' petition, but denies that said survey correctly shows the extent and boundaries of said grant, but that, on the contrary, the natural object named as the south boundary of said grant is located at least ten miles north of the south boundary as located by said survey, and that the natural object named as the west boundary of said grant is likewise located at least ten miles east of the west boundary as fixed by said survey.

Defendant, further answering, denies that the area of said grant of land is 415,036.56 acres, but, on the contrary, shows that the area included within the natural objects named in said grant when properly located would not exceed half that amount.

V.

Defendant, further answering, says that it believes it is true, as alleged in plaintiffs' petition, that on the 8th day of July, A. D. 1848, the said Antonio Sandoval conveyed the said alleged grant by an instrument of writing to one Gervacio Nolan, and that upon the death of said Nolan the said grant of land descended to his descendants and heirs-at-law, by whom the same was claimed up to the year 1880, as alleged in plaintiffs' petition.

Defendant further says that it believes it is true that on the 12th day of July, A. D. 1855, the said Gervacio Nolan (who was sometimes known by the name of Gervais Nolan), presented to the surveyor general of New Mexico due notice of his said claim to the said granted land and a petition for the confirmation of the said grant, and defendant says it believes it to be true, as alleged in plaintiffs' petition, that the said surveyor general failed to act upon the said petition of the said Gervacio Nolan, but after the death of the
36 latter his widow and heirs-at-law renewed the said application by their petition for confirmation of the said land grant addressed to said surveyor general, which petition last mentioned was prepared and presented, as alleged in plaintiffs' petition.

Defendant, further answering, says that after said petition had been presented to said surveyor general by said Nolan, and while the said petition and that of his widow and heirs-at-law was pending, as aforesaid, before said surveyor general, there was pending before Congress a claim by the said Nolan and his heirs for a grant of a large tract of land situate in what is now known as the State of Colorado, said grant having been made by Manuel Armijo, the same governor who is alleged to have made the grant herein sued for, the date of said grant being December 1, 1843, juridical possession of said grant having been given to the said Gervacio Nolan by one Cornelio Vigil, justice of the peace of the jurisdiction of Taos, on the 15th day of December, A. D. 1843; that after the United States acquired sovereignty under the treaty of Guadalupe Hidalgo by the provisions of the act of July 22, 1854, creating the office of surveyors general of New Mexico, Kansas, and Nebraska, said last-named claim was filed under the provisions of said act; that said claim was, under the provisions of said act, duly recommended to the Congress of the United States by the surveyor general of New Mexico for confirmation, and its reported number to Congress is private land claim numbered forty-eight; that thereafter said claim was continuously prosecuted in the name of the heirs of the said Nolan, and finally, on July 1, 1870, said claim was confirmed by Congress to the extent of eleven square leagues, said act of confirmation being in words and figures as follows, to wit:

"CHAP. CCII.

"An act to confirm the title of the heirs of Gervacio Nolan, de[illegible]sed, to certain lands in the Territory of Colorado.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant to Gervacio Nolan, late of the valley of Taos, deceased, approved by the surveyor general of New Mexico, October eighth, eighteen
37 hundred and sixty-one, and designated as number forty-eight in the transcript of private land claims in New Mexico, transmitted to Congress by the Secretary of the Interior on the twelfth day of May, eighteen hundred and sixty-two but being now within the limits of the Territory of Colorado, is hereby confirmed to the extent of eleven square leagues.

SEC. 2. And be it further enacted, That the exterior lines of said claim of eleven square leagues as confirmed by this act, shall be adjusted according to the lines of the public surveys as near as practicable, but in a compact form, and the claims of all actual settlers falling within the limits of the located claim above referred to shall be adjusted to the extent which will embrace their several settlements upon their several claims being established either as pre-emption or homestead according to law, and for the aggregate of the *arcars* (areas) so established under the pre-emption or homestead acts, the heirs of said Nolan, or their legal representatives, shall be entitled to locate a like quantity of public lands, not mineral, according to the lines of the public surveys, and not to exceed one

hundred and sixty acres in one section: Provided, that such location shall be made within the bounds of the original grant by the order of Cornelio Vigil to Gervacio Nolan.

SEC. 3. And be it further enacted, That it shall be the duty of the Commissioner of the General Land Office to cause the lines of the public surveys to be run in the regions where proper location would place the said Nolan claim, and the expense of the same shall be paid out of any moneys in the treasury not otherwise appropriated; but before the confirmation provided for in this act shall become legally effected, the heirs of the said Gervacio Nolan, or their legal representatives, shall pay the cost of so much of said surveys as inures to their benefit respectively, and that all actual settlers whose claims may be adjusted as valid shall have a right to enter their improvements by a strict compliance with the pre-emption or homestead laws.

SEC. 4. And be it further enacted, That upon the adjustment of said claim of the heirs of Gervacio Nolan, according to the provisions of this act, it shall be the duty of the surveyor general of the district to furnish proper approved plats to the said claimants, or their legal representatives, which shall be evidence of title, the same to be done according to such instructions as may be given by the Commissioner of the General Land Office: Provided, however, that when said lands are so confirmed, surveyed and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.

SEC. 5. And be it further enacted, That immediately upon running the lines provided for in the second section of this act the surveyor general of the district shall notify the said heirs of Gervacio Nolan, or their legal representatives, of the fact of such survey being made, and said claimants shall, within three months after notice of such survey, select and locate their said claims according to the provisions of this act, and shall, within said time, furnish the surveyor general with a description of such location, specifying the lines of the same, and the party failing to make such selection and location in such manner and within such time shall be deemed and held to have abandoned their claim, and their rights and equities under this act shall cease and terminate.

Approved July 1, 1870."

Said land so confirmed was duly surveyed and patented under the provisions of said act of confirmation to the extent of said eleven square leagues. Wherefore defendant says that plaintiffs
38 herein are not entitled to a confirmation of any portion of the land herein sued for, for the reason that the aforementioned act of *of* July 1, 1870, was a final adjudication on the part of the United States of the rights of the said Gervacio Nolan or his heirs and legal representatives in and to all private land claims under the treaty of Guadalupe Hidalgo.

VI.

All material allegations not hereinbefore answered are denied, and it is prayed plaintiffs be put to their proof of all the allegations

in said petition as provided they shall be by the act of Congress establishing this court.

Having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

39 And be it further remembered that thereafter, to wit, on the 14th day of December, A. D. 1898, the same being a day of the regular December term, 1898, holden at the city of Santa Fé, New Mexico Territory, the above-entitled cause came on for trial. John H. Knaebel, Esq., appeared for the plaintiffs, Joel Parker Whitney *et al.*

Mr. Matthew G. Reynolds, U. S. attorney, appeared for the United States. The trial of this cause not being concluded, the same was resumed on the following days, to wit, the 15th and 16th days of December, 1898, when the same was concluded.

On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

40 For the record.

In the Court of Private Land Claims, Santa Fé, New Mexico, Adjourned September Term, 1898.

JOEL PARKER WHITNEY ET AL.
vs.
UNITED STATES. } No. 152. Estancia Grant.

On December 14th, 1898, the above-entitled case was called up for trial and the following proceedings were had therein in open court:

John H. Knaebel appeared for the plaintiffs.

Matt. G. Reynolds appeared for the Government.

Mr. KNAEBEL: I will first offer in evidence a copy of the original grant papers filed in the office of the surveyor general in the matter of the present title, certified to by Henry M. Atkinson, surveyor general, April 11th, 1884, under his seal of office (marked Plaintiffs' Exhibit A).

In connection with this proof I ask to introduce the original papers referred to in this case, copy of translation, with liberty from the Government to withdraw them (Plaintiffs' Exhibit —).

It is stipulated that counsel for the plaintiffs or the defendant may have the original title papers transmitted to the clerk of the Supreme Court of the United States in case the same shall be taken to that court by appeal from the final decision of this court in this case.

WILLIAM M. TIPTON, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Knaebel, as follows:

Q. State your name, residence, and official position, Mr. Tipton.

A. My name is William M. Tipton; residence, Santa Fé, New Mexico. I am special agent of the United States court of
41 private land claims and detailed for service in the office of the United States attorney for that court.

Q. For how long a time prior to your present employment were you in the employ of the Government in the office of the surveyor general of New Mexico?

A. For the greater part of sixteen years.

Q. During the time of your employment in the surveyor general's office and during the time of your present employment have you become familiar with the papers pertaining to Spanish and Mexican land claims on file in the office of the surveyor general?

A. Yes, sir; I have.

Q. Can you produce from the custody of the surveyor general the papers relating to the Estancia grant now in controversy—the original papers?

A. I have those papers here.

Q. Please look at Plaintiffs' Exhibit A, already introduced in evidence, purporting to be a copy and translation of the papers on file in the office of the surveyor general, and, in the order in which the certified translations of the originals appear in this Exhibit A, please to produce the originals.

A. The first document forming a part of the certified copy handed me appears in the files of the Estancia grant in the surveyor general's office as document number 1, the original of which I have here (Plaintiffs' Exhibit No. 1 for identification).

Q. Is that original in Spanish or English?

A. It is in English. It is a notice that Gervacio Nolan made, under the act of 1854, informing the surveyor general of the fact that he makes claim to this land. The next document appearing in the certified copy is a translation of a document which appears in the surveyor general's files as document B, the original being in Spanish. That is certified by Jose Serafin Ramirez y Casa-
42 noba, comptroller of the departmental treasury of New Mexico, in regard to the loaning of certain sums of money by Antonio Sandoval to the departmental treasury (Plaintiffs' Exhibit No. 2 for identification). I have also a translation of Plaintiffs' Exhibit No. 2, which appears as number 8 in the files of the surveyor general's office (Plaintiffs' Exhibit Number 2 A). The next paper following the order of the certified copy is a petition by Antonio Sandoval and a marginal order or decree, signed by Manuel Armijo, both being in Spanish; which document is marked in the files of the surveyor general's office in this case as letter A (Plaintiffs' Exhibit Number 3 A for identification).

Q. Please look at the signatures on the original Spanish document, marked number 3 for identification, and state whether you are familiar with those signatures and what they are.

A. There are but two signatures on the paper in question, the one being that of Antonio Sandoval, and the other that of Manuel Armijo, and I am familiar with both of them.

Q. What is your opinion as to their genuineness and authenticity?

A. I think they are both genuine. The next paper is a translation in English of a document just offered as Plaintiffs' Exhibit Number 3. This translation is marked in the surveyor general's files as document number 7 in this case (Plaintiffs' Exhibit 3 A). The next paper is the act of possession, marked on the files of the surveyor general's office as letter C; it is in Spanish (Plaintiffs' Exhibit Number 4 A for identification).

Q. Do you know the signature of the alcalde on this instrument?

A. I do not know it. The next paper is the translation of the act of possession in English, marked in the surveyor general's files as number 9 (Plaintiffs' Exhibit Number 4 A for identification).

43 The next document is a transfer signed by Antonio Sandoval to Gervasio Nolan of the property in question; which paper is marked on the surveyor general's files as letter D in Spanish (Plaintiffs' Exhibit Number 5).

Q. Look at the signature on the original Spanish instrument marked for identification as Plaintiffs' Exhibit 5 and state whether or not in your opinion it is a genuine signature of Antonio Sandoval, with his rubrica.

A. I believe it is. The next document is a translation of the document just presented, being marked on the files of the surveyor general's office as number 11 (Plaintiffs' Exhibit 5 A for identification). The next document is in English and is a notice of the heirs of Gervasio Nolan, or an amended petition, and is designated on the files of the surveyor general's office as number 2 (Plaintiffs' Exhibit *B*umber 6 for identification). The next document is in English and is the testimony of Pablo Delgado, designated on the surveyor general's files as number 13 (Plaintiffs' Exhibit Number 7 for identification). The next document is a lease by Jarvis Nolan to R. Beach; this document is in English and is designated in the surveyor general's files as number 12 (Plaintiffs' Exhibit Number 8 for identification). The next document is the decision of the surveyor general on the claim, being in English and being designated as document number 22 in the surveyor general's files (Plaintiffs' Exhibit Number 9 for identification).

Q. Who was Antonio Sandoval, so far as you know from your historical and official familiarity with official personages in New Mexico?

A. I know nothing about him of my own knowledge, except such information as I have derived from the archives of New Mexico and from conversation with people here in the Territory; all I know about him is hearsay.

44 Q. According to that information, what was his official position?

A. At one time he was a man of great prominence and considerable wealth in New Mexico, and at one period he was a prefect; I do not remember exactly what date it was. He lived, I think, until

early in the '60's, if I remember rightly, according to some documents I saw at Barelas, and at the time of his death left a very large estate for those times, the probate of which is in the records of Bernalillio county.

FRANCISCO DELGADO, sworn on the part of the plaintiff, testified, upon direct examination by Mr. Knaebel, as follows:

Q. What is your name, age, and residence and employment?

A. My name is Francisco Delgado; my age, forty-one years; my occupation at the present time, I am employed in the office of the United States attorney for the court of private land claims, Santa Fé, New Mexico.

Q. Who was Pablo Delgado?

A. Pablo Delgado was a brother of my father, Fernando Delgado.

Q. Is he living or dead?

A. He is dead.

Q. When did he die about?

A. He died about two years before my father died; my father died in 1873.

Q. Was the Delgado family connected by marriage or otherwise with the family of the late Gervasio Nolan?

A. Yes, sir.

Q. Please look at this original deed purporting to have been made between Maria de los Dolores y Nolan, Francisco Nolan, and others to Joel P. Whitney, and state who were the women therein mentioned respectively as Marie Manuelita Martina Delgado de Baca, wife of Francisco C. de Baca, and Maria Erinea Delgado de Romero, wife of Margarito Romero?

A. Both of the two ladies mentioned are daughters of Don Pablo Delgado.

Q. Were they descendants of Gervasio Nolan?

A. Yes, sir; Don Pablo Delgado was married first to a Nolan and had these two daughters.

45 Q. First to a daughter of Gervasio Nolan, and these two girls were the granddaughters of Gervasio Nolan?

A. Yes, sir.

Q. I offer a copy of a deed of conveyance bearing date of the 23rd of September, 1880, between Maria de los Dolores Lolanda y Nolan, Fernando Nolan and Julianita Nolan, his wife; Eugenio Nolan, Antonio Nolan and Andrea Nolan, his wife; Franciso Nolan, Maria Manuelita Martin Delgado y Baca, Francisco C. de Baca, her husband; Maria Erinea Delgado y Romero and Margarito Romero, her husband, to Joel P. Whitney, in consideration of $27,500.00, conveying the premises in question and recorded October 2nd, 1880, and certified to be a correct copy from the record in Book A 4, page 485 to 489, by Manuel R. Otero, probate clerk of Valencia county, New Mexico, and under the seal of the probate court of that county (Plaintiffs' Exhibit B). With reference to exhibits marked for identification from No. 1 to and including No. 9, I offer these originals

in evidence, but ask to substitute the certified copies which are already in evidence, so that the originals may be withdrawn at the convenience of the Government.

Mr. REYNOLDS: So far as they are concerned, I want to interpose an objection to the introduction of the original title papers and certified copies representing them for the reason that they are produced from private hands and do not purport to be *testimonios* and do not show in themselves nor has any evidence been introduced that their attempted disposition was ever made a matter of record in the archives of the department of New Mexico, nor is there any connection shown that the archives have been lost or destroyed; second, that the genuineness of the signature of the alcalde to the act of possession has not been established, and, in addition, the Spanish
46 title papers, consisting of the petition of Antonio Sandoval, the marginal order or decree by Governor Armijo, and the act of possession by the alcalde, Jose Baca y Ortiz, purporting on their faces to be originals, are not in the proper custody, nor is their absence from the archives and in the custody of the plaintiffs accounted for if they ever had been in the archives.

WILLIAM M. TIPTON, recalled by the plaintiffs for further direct examination, testified as follows:

Q. When did you first become connected with the surveyor general's office for New Mexico?

A. In the spring of 1876.

Q. You stated that during the time of your connection with the surveyor general's office, and afterwards, during your employment as special agent of the Government, you became familiar with the archives kept in the office of the surveyor general. Please to state whether you have ever seen or have been able to find in the archives of the Government kept in the office of the surveyor general any record by Armijo or by his secretary of the grants made by him or signed by him.

A. I have no recollection of ever having seen any such record.

Q. In your opinion, if such record existed in the archives during the time of your connection with the surveyor general's office or your employment as special agent of the Government, would you probably have encountered it in your examinations of these archives?

A. Yes, sir; I would.

Q. State whether the archives of the Government of the United States derived from the antecedent governments appear to have been kept in complete form without disappearance, peculation, or loss of archives kept by our Government.

A. These archives, as far as I am acquainted with them, are as complete now as they were when I first became acquainted
47 with them, which was nearly twenty-three years ago, and I have no personal knowledge that would enable me to state as to whether anything was missing from them or not. I know nothing about their condition prior to the spring of 1876 of my own knowledge.

Q. Has any book of records pertaining to Spanish and Mexican land grants which ought to be now in the surveyor general's office disappeared mysteriously from that office during the time that you have been acquainted with its affairs?

A. I believe there was. I had forgotten about the disappearance of a book there along about 1879 or 1880. There was a book in the surveyor general's office, I believe, that disappeared, and, so far as I know, it has never been recovered.

Q. Did you ever examine that book enough to tell of its general character?

A. I cannot answer that positively.

Q. To the best of your recollection?

A. It is very likely that I had examined the book to a greater or less extent, because I had examined other books of the same character, but I do not recollect now whether I ever made such an examination as would enable me to state positively that I ever did.

Q. Is it the best of your recollection that that book was a record?

A. I know what it purported to be, but I do not know that I know that from having examined it. I know it was a matter of common understanding among the employees of the office as to what it was.

Q. What did it purport to be?

A. I understood that it was a book which had been kept after the acquisition of this Territory by the United States, in which documents in relation to lands were recorded in compliance with some provision of what was known as the Kearny Code, which required persons to present their documents to land to the recorder to have them copied in books and preserved.

48 Q. Do you have any official information as to the disappearance of the archives from the custody of the United States since the acquisition of this Territory? I refer to archives pertaining to land titles derived from Spain and Mexico.

A. I know what has been a matter of common talk here in the Territory. I do not know that I have any official information about it. I do not know that I know exactly what you mean by official information.

Q. Repeat the question, omitting the adjective "official."

A. I know what I have heard stated by various persons claiming to have personal knowledge of the disappearance of archives belonging to New Mexico, if that is the kind of information that you want.

Q. Well, if it is the best you have got I would like to hear it.

A. I have heard it stated that some documents belonging to the archives of the Territory were destroyed in the year 1837, at the time of the revolution which resulted in the death of General Peres, who was then the governor of New Mexico, and I have also heard it stated that during the administration of Governor Pyle, who was governor somewhere about 1870, some of the archives of the Territory were destroyed by fire and some were sold to different persons and scattered about the town here.

Q. From the time of your first connection with the office of the surveyor general down to the present time have you had any knowl-

edge or information of the restoration of archives to the Government, which archives had previously been lost or mislaid?

A. I have knowledge of the restoration of one book to the custody of the surveyor general's office of this Territory. As far as I know, that book had never been in the custody of that office.

49 Q. It was a governmental book?

A. From its character, it was a book which could properly be only in the custody of the territorial officials.

Q. To what subject did it pertain?

A. It pertains to land grants and to other documents affecting land titles.

Q. Was any investigation made as to the means by which that book had been removed from the custody of the Government?

A. Yes; there was some.

Q. What was the result of that investigation?

A. Well, the conclusion was arrived at that this book was a book which had probably been disposed of by Governor Pile at the time he disposed of other papers belonging to the Territory.

Q. Was that a book of records?

A. It was a book in which documents in regard to lands were recorded, and the same kind of a book, as I understand, as the one that disappeared years ago from the surveyor general's office and which has not been recovered.

Q. Mr. Tipton, have you produced into court all the archives or other papers pertaining to the title of the Estancia grant now in controversy which are to be found, so far as you know, in the office of the surveyor general of New Mexico?

A. I have not produced any here. Some have been handed me about which I was asked, and I have no recollection just now of ever having seen any other papers affecting the title of that property.

Q. Is it your opinion that there were no others in the archives in the possession of the surveyor general?

A. To the best of my knowledge there are none.

Cross-examination by Mr. REYNOLDS:

Q. This record book, the disappearance of which occurred in
50 about 1879, what had that been commonly known as down in the surveyor general's office?

A. It was commonly called and known as book, letter B.

Q. How many of these books were originally in the custody of the surveyor general?

A. Only two to my knowledge, A and B.

Q. Has Book B ever been returned to your knowledge?

A. No, sir; not to my knowledge.

Q. What is the book that was returned to the surveyor general's office?

A. It was marked letter C.

Q. Is it of the same character and purports to contain the same character of records as in Book A?

A. Yes, sir.

Q. Did you ever see Book B?

A. Yes, sir; I saw Book B.

Q. While it was in the office?

A. Yes, sir.

Q. Can you give me the dates covered by that Book B, the period which it covered in its making up?

A. No, sir; I could not.

Q. Did you ever see Book C?

A. Yes, sir.

Q. These books, A, B, and C, as I understand you, were records made purporting to be made up under the provisions of the Kearny Code?

A. That was the understanding in the office.

Q. Did it contain other records save those pertaining to land grants or lands?

A. They contained grants; they contained conveyances to real estate, and I think there are—I am not perfectly certain, but I am under the impression that there are some papers, documents, in regard to controversies about land, but the most of them consisted of copies of either grant papers or deeds to real estate.

Q. These books were prepared under the Kearny Code for the purpose of enabling persons having lands to have their titles recorded and preserved?

A. That is my understanding of it.

51 Q. They were made up under the authority of General Kearny, who was military governor here after the conquest with Mexico?

A. Yes, sir.

Q. Did you ever have occasion to see any book in the surveyor general's office containing a large list of documents, indexes, and of documents in the possession of the territorial secretary, turned over by the former government to the United States Government, commonly called the Vigil Indexes?

A. Yes, sir; I have seen such a book.

Q. Take that book (hands large book to the witness) and look at it and see if that is the fellow.

A. The book handed me is the book to which your question refers.

Q. Have you had occasion to examine that book so that you can describe its purport and contents and the officers and their positions under whom it was compiled and by whom it was compiled?

A. The book purports to be a general index of all the documents from the time of the governments of Spain and Mexico up to the year 1846, and it contains a list of a very large number of papers of many different kinds—some of them are in relation to military matters, others in regard to judicial matters, and a certain portion of the index is set aside for the indexing of the documents in relation to grants and lands.

Q. By whom was that book compiled, or index compiled, if you know?

A. According to an affidavit which is attached to one of its leaves

it was prepared by Antonio B. Vigil and Domingo Fernandez under the direction of Donaciano Vigil, who at that time was the secretary of New Mexico and had charge of the archives and all papers, and purports to have been completed prior to the year 1851.

Q. At that time what was the official position of Donaciano Vigil in the Territory in 1851?

A. According to this affidavit he was secretary of the Terri-

52 tory.

Q. Under the United States?

A. Yes, sir.

Q. How many documents does that index purport to contain?

A. I do not know. I judge from having examined the index it would be impossible to tell. There are certain documents that are described as being marked with certain numbers, and from the description of them it is evident that the one number applied to a large number of papers, or more than one paper; at any rate, to which the same number was given. It would be impossible to tell.

Q. Your conclusion from it, then, is that the number entry on the index would apply in some instances, in a number of instances, to a bundle of papers.

A. Yes; I think that is the case.

Q. You have no means of telling the character of the documents as a rule contained in these bundles?

A. In some cases the description is perfectly plain; in others, it is not. Certain cases simply state on the back so and so, containing documents in relation to such and such matter, not stating how many documents.

Q. Have you ever gone over that index with a view of determining what was in it?

A. In a general way I have. I have gone over that portion of it referring to grants a number of times.

Q. How many numbers or bundles are contained in that index?

A. Well, I could not tell that without a very careful examination on account of the peculiar numbering. The first impression I got of it was that there were ten or twelve thousand different numbered papers, but upon examining it very critically I came to the conclusion that there were less than that. The numbering is not consecutive through the book. It would require a very critical examination to form an accurate opinion about that.

53 Q. In the course of your examination of it in reference to land grants did you ever discover anything referring to the existence in the archives of a record or a paper in relation to the Estancia grant, alleged to have been made to Antonio Sandoval in the year 1845?

A. I could not state positively about that; I do not remember that I have; but it has been a long time since I examined this book, and then it was not with a view to that particular case, so I could not state positively; I could only do that by going over that portion of the index that refers to grants.

Q. How many numbers are there in reference to grants?

A. There are probably five or six hundred entries; I do not mean

that many grants, but documents under the heading referring to grants of lands in different ways.

Q. You say that you have never seen a record in the office of the surveyor general of any grant purporting to have been made by Governor Armijo any time during his incumbency as governor?

A. There are numerous grants down there that he made.

Q. By the term record I mean not only entries in books bound together, but original documents left in the archives purporting on their faces to be original grants of land.

A. Do you mean to distinguish between documents that were filed there from private hands and documents that have always been in the archives so far as the records show?

Q. Yes, sir; I do not have reference to documents that have been produced from private hands and filed by them in various cases. I mean that constitute a part of the archives proper.

A. I have never seen a record in the sense of a book containing grants or memoranda of grants made by Governor Armijo, but
54 as to whether there are any grants purporting to have been made by him among these papers which are called archives in the surveyor general's office in distinction from private land claims filed there, I am not perfectly certain, although I do not recollect ever having seen any such. If there were such a document among the archives, it is possible I might have seen it and forgotten it.

Q. Are there any books or records in the archives containing entries of Armijo's official acts as governor?

A. I have seen several books of that kind. My impression is that they are in the territorial library. I know there are some there; there may be in the surveyor general's office, but my mind is now particularly directed to some that I have seen in the territorial library.

Q. Do you know whether any of them cover the period of 1845 and the period of 1846?

A. I do not remember.

Mr. KNAEBEL: The plaintiffs now call upon the defendant The United States of America to produce from its own custody all archives in its possession showing the acts of Manuel Armijo as governor during the year 1845, and particularly all acts pertaining to grants in which, according to the terms, Antonio Sandoval was a party or concerned. The plaintiffs also call on the said defendant to produce the commission under which Manuel Armijo was acting as governor in 1845, and also the records in its possession and commissions concerning the office of Baca y Ortiz, as justice of the peace of the Real del Oro, at the date of the act of possession, tendered in evidence; also the records of grants made by authority of the supreme executive of Mexico in the year 1845, and particularly the records immediately pertaining to the grants here in question.

55 Mr. REYNOLDS: The United States attorney, for and on behalf of the United States, declines to produce or attempt to

produce the same for the reason that they are not under his custody or control, but that the act under which this court has assumed jurisdiction in this case provides: SECTION 4. That it shall be the duty of the Commissioner of the General Land Office of the United States, the surveyors general of such Territories and States, or the keepers of any public records who may have possession of any records and papers relating to any land grants or claims for land within said States and Territories in relation to which any petition shall be brought under this act, on the application of any person interested, or by the attorney of the United States, to safely transmit such records and papers to said court or to attend in person or by deputy any session thereof when required by said court, and produce such records and papers.

Mr. KNAEBEL: It don't say anything about Governor Pile.

Redirect examination by Mr. KNAEBEL:

Q. Mr. Tipton, does this book respecting which you have been examined by counsel for the Government contain an index of the book of records of grants kept by the Spanish governor, Gaspar Domingo de Mendoza, in or about the year 1742?

A. I do not know.

Q. Have you ever seen such a book in the archives?

A. I do not recollect having seen such a book.

Q. Are you not aware that Governor Gaspar Domingo de Mendoza as well as other governors, according to the recitals in grant papers that have come under your observation, recorded or minuted the grants made by them in official records kept by them?

A. I know that there are statements appearing upon some
56 of the old Spanish grants in the archives here to the effect that note had been made of the grant in what was called a government book.

Q. Have you ever seen that government book?

A. No, sir; not to my recollection.

Q. Do you know whether Governor Pile disposed of it?

A. I do not know.

Q. Do you believe it is in the archives of the surveyor general?

A. I do not believe it is in the archives of the surveyor general.

Q. When was the Kearny Code promulgated?

A. About, I think, in the latter part of 1846.

Q. Didn't that code require holders of title papers to present them to the secretary of the Territory for registration?

A. I am not certain about the language of that requirement; they were required to be presented, as I understand it, to an officer whose duty it was to record them, but as to whether it was the secretary of the Territory I am not certain.

Q. Is it not true, to the best of your knowledge and information, that a very large number of documents pertaining to real estate in New Mexico were presented to the office mentioned in the Kearny Code, and were retained by the Government, and do now appear indexed in the book which you have just examined?

A. I have no knowledge of that kind.

Q. Have you any knowledge to the contrary?

A. No; I do not know that I have any knowledge to the contrary.

Q. Please to explain to the court what you regard as the distinction between an archive and a paper on file in the office of the surveyor general, kept in the custody of the Government as pertaining to official custody, and which you regard as not being an archive.

A. The distinction to which you refer has nothing to do
57 with what I regard. It has been a custom for many years in the surveyor general's office to refer to these documents which were received by the first surveyor general from the territorial archives as archives in distinction from those papers which have been filed in private land claims in that office and which came from the hands of the claimants, so that in the surveyor general's office, when a paper is referred to as being an archive, it is understood to have been one of the documents which were turned over to the Government of the United States by the government of Mexico and subsequently deposited in the office of the surveyor general, and not a document coming from the hands of private parties and filed in a claim against the United States in that office.

Q. In what year was the first surveyor general appointed; in 1854, under the act of Congress of that year?

A. Yes, sir.

Q. And didn't that surveyor general receive into his custody numerous papers that had previously been surrendered by private citizens to the public custody under the requirements of the Kearny Code of 1846?

A. I know absolutely nothing about that.

Q. What do you believe?

A. I never heard it before. I never heard the suggestion.

Q. If private citizens, under the requirements of the Kearny Code of 1846, had delivered into the public custody for the purpose of registration such documents pertaining to lands as required in the Kearny Code, and those documents remained in the official custody of the officer mentioned in the Kearny Code or his successor on the incoming of the surveyor general in 1854 and had been turned over to the custody of surveyor general, would they have been treated as archives and marked and regarded as archives?

A. I think undoubtedly they would.

58 Q. So that if a grant or act of possession or other such paper had been committed to the custody of the Government under the terms of the Kearny Code prior to 1854, that document, although coming from private custody prior to 1854, would now be regarded as an archive of the Government, would it?

A. According to the custom of the office I think it would be; yes, sir.

Q. Does this index to which your attention has been called by the counsel for the United States refer in any case to any bound book or does it refer to single documents and legajos?

A. I cannot state as to whether it refers to any bound book or not.

I never examined it with a view of impressing that on my mind. I know that it does refer to many single documents, and that it refers to some legajos — bundles of documents, and that in other instances it refers to apparently what would be smaller packages than were called legajos, consisting of a number of papers referring to the same thing.

Q. According to the best of your knowledge, information, and belief, based on your experience during the last twenty-two years in these matters of land titles in which the Government has been concerned, can you not say that it is true that the Government officials in many cases have been exceedingly negligent, ignorant, and careless in preserving the public archives and papers committed to the public custody for safe keeping?

A. Do you refer to this negligence taking place during the last twenty-two years?

Q. At any time I am talking about. I refer to negligence whenever it occurred, according to the evidence of it which now appears.

A. I have no doubt prior to the time that I became acquainted with the Spanish archives of New Mexico that some of the
59 officers who had been in charge of them were negligent and permitted their loss to some extent, and I know that that negligence has continued in regard to the documents that were in charge of the Territory of New Mexico. So far as the records of the surveyor general's office are concerned, with the exception of the loss of the one book to which I have already referred, there has never been a scrap of paper lost in that office in twenty-two years that I have known it, referring to Spanish and Mexican grants.

Q. What territorial officers has charge of any papers pertaining to Spanish or Mexican land grants in this Territory, which papers ought to be in the custody of the United States?

A. The Territorial Library has charge of a large number of papers, some of which may refer to lands directly and many of which are useful in the examination of questions arising in this court, but as to whether those documents should be in the custody of the United States I do not express any opinion.

Q. You have an opinion, nevertheless?

A. I do not know that I have on that subject.

Recross-examination by Mr. REYNOLDS:

Q. Were the documents referred to by counsel as having been delivered under the Kearny Code from private individuals, which documents related to land grants or lands for record, endorsed in the ordinary manner in which deeds are usually endorsed showing the date of filing and the book and page in which they were recorded?

A. I have seen a great many of such documents containing endorsements substantially as you describe in your question.

Q. Did you ever see a document that was recorded in any of these books that did not bear such an endorsement?

A. To the best of my knowledge, no.

60 Q. Are there any documents in the office of the surveyor general, to your knowledge, which purport to have been filed

in that office and recorded in any books kept under the Kearny Code, outside of those filed with the surveyor general by private parties claiming lands or for lands, and including those filed by private parties for lands under the law of July 22nd, 1854?

A. I do not recollect any.

Q. Then you have never seen a document in what you have designated the archives which purports to have been filed under the Karney Code for record?

A. Not that I remember.

Redirect examination by Mr. KNAEBEL:

Q. Mr. Tipton, are there numerous instruments in the surveyor's general's office, such as conveyances, wills, inventories in probate proceedings and other documents pertaining to real estate, that have no endorsement on them showing that they had been recorded under the Kearny Code?

A. Yes, sir; there are.

Q. Have you any knowledge whatever as to how such papers came to be filed in the archives and made a part of the archives?

A. The archives in the surveyor general's office, you mean?

Q. Yes, sir.

A. Yes; I understood they were transferred to the surveyor general's office from the secretary of the Territory.

Recross-examination by Mr. REYNOLDS:

Q. So far as your knowledge goes, Mr. Tipton, and your examination, was it the custom of the officers in charge of the archives in making up the Kearny Code records to endorse upon the instruments when they were presented for record the date at which they had been filed?

A. I do not think it was. I think it was the custom, though, to endorse upon them the date upon which they were recorded.

61 Adjourned until tomorrow.

DECEMBER 15TH, 1898—two a. m.

The- resumed the further hearing of said case.

Mr. KNAEBEL: We offer in evidence the testimony of Ira M. Bond in the case of Chaves *versus* The United States, involving the Cubero grant, so far as that testimony relates to the subject of the loss of public archives under the administration of Governor Pile (to be marked Plaintiffs' Exhibit C).

Mr. KNAEBEL: I ask leave, in case any further proof is discovered as to the office and signature of the alcalde who delivered possession of the Estancia grant, to produce it in court.

Plaintiffs rest now.

Mr. REYNOLDS: I offer in evidence all the proceedings had upon this grant presented to the surveyor general under the law of July 22nd, 1854; the supplemental report made by Surveyor General

Julian, and also the report made by Mr. Sparks thereon to Congress when he was Commissioner of the General Land Office, so as to complete the proceedings, if any, and by whom taken, as required by this act, under any other act or authority than the act creating this court (to be marked Defendant's Exhibits A and B, respectively).

Mr. KNAEBEL: As to each of the offers separately the plaintiffs object to any document involved in the offer as being irrelevant and incompetent.

Mr. REYNOLDS: For the purpose of sustaining the allegations contained in the third paragraph of defendant's answer and for the purpose of showing that on November 19th, 1824, a grant of one square league of land was made to Antonio Sandoval by the terri-
62 torial deputation of New Mexico, by and with the advice and concurrence of the political chief, Bartolome Baca, and that on October 21st, 1856, Antonio Sandoval filed before the surveyor general of the Territory of New Mexico under the act of July 22nd, 1854, his claim for said grant and for examination thereon by the surveyor general, and report to Congress for its action thereof; that after the examination by the surveyor general of the claim on September 17th, 1857, he approved the same and transmitted to Congress, together with copies of the papers in relation to the same as provided by law, as reported number 12; that on June 21st, 1860, an act of Congress was passed confirming the same, as appears under the title of "An act confirming certain private land claims in the Territory of New Mexico," to be found in volume 12 of the Statutes at Large of the United States, at page 71. In order that the consideration of this Agua Negra grant to Antonio Sandoval may appear as reported number 12, the Government offers in evidence the petition presented to the territorial deputation, its action thereon, the delivery of possession to Sandoval by Sarracino, the commissioner appointed for that purpose, and the report of the surveyor general recommending the same for confirmation. Under the confirmation said grant has been surveyed and patented.

(To be marked Defendant's Exhibit "C.")

The plaintiffs object to the offer just made on the ground that the instruments and proceedings therein referred to are irrelevant, immaterial, and incompetent; secondly, that neither the doctrine of this court nor that of the Supreme Court of the United States declared in the Hayes case for the Antonio Chaves grant, notwith-
63 standing the wise dissents of Justices Stone, Fuller, and Shiras, the Agua Negra grant was absolutely void in its inception; thirdly, that neither by any action of Antonio Sandoval nor his widow, Ursula Chaves, in asserting claim for the Agua Negra grant before the political department of the United States Government, nor by any action of that Government, the antecedent assigns of the Estancia grant, now in question, could be in any manner bound. Counsel for the plaintiffs admits that so far as the statements of fact contained in the documents referred to and allegations in the answer of the United States under the third paragraph are concerned they are admitted to be true, but as to their legal effect or conclusion no admission is made on behalf of the plaintiffs, ex-

cept, however, counsel for plaintiffs denies that any proceedings in assertion of the Agua Negra grant were taken by Antonio Sandoval before the American authorities, but avers that the said Antonio Sandoval was dead at the time, and that such proceedings were taken by his widow, Ursula Chaves.

Mr. REYNOLDS: The object of the introduction of this testimony on behalf of the United States is to show that Sandoval and those claiming under him had received a grant from the Mexican government of one square league of land and to show the consideration therefor, and to show that the same had been recognized and confirmed and patented by the United States under the treaty of Guadaloupe Hidalgo to those claiming as heirs and legal representatives of the said Sandoval, the original grantee.

Mr. KNAEBEL: The object of the objection of the plaintiffs is to call the court's attention to the fact that Antonio Sandoval received nothing of the kind from the Mexican government.

Mr. REYNOLDS: For the purpose indicated and the offer
64 made under the grant to Sandoval, known as the Agua Negra grant, reported number 12, the Government offers in evidence the petition filed before the surveyor general of New Mexico by Antonio Sandoval, by his attorney, M. Ashurst, in the year 1859, under the act of July 22nd, 1854, claiming what is known as the Bosque del Apache grant, situated now in Socorro county, Territory of New Mexico (to be marked Defendant's Exhibit "D"); also the petition to the governor of New Mexico by Antonio Sandoval, dated November 24th, 1845, petitioning for the same; on the 28th of November, 1845, the act of Governor Armijo thereon, and the act of possession executed by Vicente Pino on the 7th day of March, 1846; also the report of the surveyor general thereon on July 20th, 1859, approving the same and transmitting it to Congress as reported number 35 for its action (to be marked Defendant's Exhibit "E"). Further, that the same was confirmed by an act of Congress approved June 21*th*, 1860, to Antonio Sandoval, by an act entitled An act to confirm certain private land claims in the Territory of New Mexico, volume 12, Statutes at Large of the United States, page 71, marked Defendant's Exhibit F. The Government also offers in evidence the patent under survey and action of confirmation based upon said report of the surveyor general (to be marked Defendant's Exhibit F F).

Mr. KNAEBEL: It is stipulated that the patent need not be copied in the record, but that said land was patented in conformity with the report of the surveyor general and the confirmation by Congress. Such stipulation is subject to the objections interposed by the plaintiffs to the said offer of proof. The plaintiffs object to this offer of proof and to each and all of the instruments and proceedings tendered in evidence under that con-
firmation, on the grounds, first, that the said instruments
65 and proceedings are irrelevant, immaterial, and incompetent; secondly, that the Bosque del Apache grant was one in colonization and exceeded the powers of the governor under the laws of colonization; thirdly, that the Estancia grant, now

in question, was not a grant in colonization; fourthly, that the proceedings looking to the confirmation of the Bosque del Apache grant by our Government were subsequent to the transfer of the Estancia grant to Gervasio Nolan. Counsel for the plaintiffs does not object to the form or mode of proof of these instruments, but to the incompetency and irrelevancy of the evidence sought to be introduced.

Mr. REYNOLDS: The survey and patent pursuant to the aforesaid confirmation contained 60,117.30 acres. The United States offers in evidence the petition filed before the surveyor general of the Territory of New Mexico, under the act of July 22nd, 1854, by John S. Watts, attorney for the heirs of Gervasio Nolan, deceased. The claim was filed on October 2nd, 1860 (to be marked Defendant's Exhibit "G").

Also copy of the petition made by the said Nolan, dated Santa Fé, November 14th, 1843, directed to the governor, asking a grant of land in the valley of the Arkansas (to be marked Defendant's Exhibit "H").

Also the order of reference by Governor Armijo to the prefect, dated December 1st, 1843, for the possession of the same (to be marked Defendant's Exhibit "I").

Also the act of obedience, signed by Archuleta December 8th, 1843 (to be marked Defendant's Exhibit "J").

Also the presentation by Nolan of the same to the justice of the peace, Cornelio Vigil, dated December 9th, 1843 (to be marked Defendant's Exhibit "K").

66 Also the act of possession executed by Vigil the 15th day of December, 1843 (to be marked Defendant's Exhibit "L").

Also the report of the surveyor general, A. P. Wilbur, approving the same and recommending it to Congress for confirmation, dated October 8th, 1861, as reported number 48 (to be marked Defendant's Exhibit "M"). The act of Congress July 1st, 1870, confirming the same to the extent of eleven square leagues, with certain provisos, entitled An act granting to the heirs of Gervasio Nolan certain lands in the Territory of Colorado, volume 16, Statutes at Large of the United States, page 646 (marked Defendant's Ex. N); that under said act of confirmation said lands under the provisions of said act have been surveyed and patented to the extent of eleven square leagues. Said patents are now offered in evidence, but are not set forth in the record for the reason that will hereafter appear by stipulation entered of record.

Mr. KNAEBEL: To the said offer and the instruments and proceedings and each and all of the instruments and proceedings involved and the proceedings involved therein the plaintiffs object on the grounds, first, that the said instruments and proceedings are irrelevant, immaterial, and incompetent; and, secondly, that the Estancia grant, now in question, was vested in the grantee and his assigns as a complete and perfect title, and it was not within the intent or constitutional power of Congress to divest that title by any provisos contained in the act of confirmation of the Estancia grant, and that, in fact, the said act did not even assume to interfere with any prior

vested title. The plaintiffs do not object to the form or mode of proof or any of the said instruments if admitted, but to their evidential irrelevancy, immateriality, and incompetency, and the plaintiffs waive the production of the said letters patent,
67 survey, &c., but say that if the same be admitted the statement of counsel for the Government as to their purport may be accepted with the same effect as if the said instruments had been thoroughly proven. It is admitted on the part of the plaintiffs that the Antonio Sandoval and the Gervasio Nolan referred to in the several offers of proof made by the Government and in each of the several instruments and proceedings mentioned or referred to in such offers are the identical Antonio Sandoval and Gervasio Nolan mentioned and referred to in the evidence heretofore adduced on the part of the plaintiffs.

This is all the testimony that was introduced on this trial.

SANTA FÉ, NEW MEXICO, *December 27th*, 1898.

I hereby certify that the above and foregoing twenty-eight (28) pages contain a full, true, and correct transcript of all the testimony offered on the trial of the above-entitled case in open court.

W. J. McPHERSON,
Official Stenographer.

[Endorsed:] No. 152. Transcript of trial. Filed in the office of the clerk, court of private land claims, Jan. 9, 1898. Jas. H. Reeder, clerk, by —— ——, deputy.

68 (PLAINTIFFS' EXHIBIT 1.)

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

The undersigned, a resident of the Territory aforesaid and county of Taos, respectfully inform- the surveyor general that he has filed for examination and confirmation in his office a claim to a certain piece or parcel of land situate, lying, and being in the county of Valencia, Territory aforesaid, which said land was granted by Manuel Armijo, governor of said Territory, to Antonio Sandoval on the seventh day of October, 1845; that the said land was granted, as aforesaid, to the said Antonio Sandoval for services rendered to the government of Mexico, as will appear by the document marked No. 1; that the said governor aforesaid granted the said — by virtue of the authority in him vested by the government of Mexico, as will appear by the statutes & collection of decrees of the aforesaid government, and also by communications addressed to the aforesaid governor by the authorities of the aforesaid government of Mexico, which said communications are or should be deposited in the archives of this Territory, and to which reference is made. The boundaries of said piece or parcel of land are as follows: On the north, one league from the Berrendo (deer spring), the said spring being within the boundaries of the said grant; on the south, one league

from the Salt lakes, including said lakes; on the east, the hills and range of mountains of the Pedernal, and on the west, the waters of the Mesteñas.

The said grant of land is situate in the Territory aforesaid and in the county of Valencia, and the possession duly given by the justice of the peace of the Real Del Oro, in the aforesaid year 1845, as will be seen by reference to document marked No. 2.

The undersigned further states that all the right, title, and interest of the said Antonio Sandoval to the aforementioned tract or parcel of land was transferred to the undersigned according to law on the eighth day of the month of July, 1848, as will appear by the document marked No. 3. He further states that he cannot
69 furnish a plat of survey of the aforementioned tract, as no survey has ever been executed.

The undersigned, being the present claimant to the aforesaid tract of land, respectfully requests that a patent may duly issue to him according*ly* to law*s*.

his
GERVACIO x NOLAND.
mark.

Santa Fé, New Mexico, July 12th, 1855.

70 (PLAINTIFFS' EXHIBIT "A.")

Sello tercero. Un peso.

Años de milochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Exmo. Sor. Gobor.

El C. Antonio Sandoval, vesino dela Villa de Alburquerque, ante la recta Justificasion de V. E. como mas en Dro. haya lugar y al mio convenir pueda salvo las protestas utiles y nesesarias comparesco y digo: Sor. Que avirtud de aser la suma de Treinta y Tantos años q. estoyprestando servicios ala patria, tanto con mi persona, como con mis vienes, como es claro y evidente hta. la epoca presente sin que p*a*. ello haya puesto la menor escusa de ninguna manera, y sin que por esto seme halla dado ninguna recompenza de mis servicios, por lo q. asiendo, merito alo espuesto si acaso huviere lugar p*a*. ello paso a impetrar de la veneyolencia de V. E. se sirva en nombre de nuestro Supremos poderes de la Nasion Mejicana el aserme la consepcion y grasia de consederme por posesion *Vntegrum*. el punto delas lagunas de Sal, demarcandose por linderos asi al Norte una legua del ojo del Berrendo qudando dentro dela possesion el citado ojo del Berrendo, y dela lagunas de sal al Sur otra laguna, por el este los serritos del pedernal, y por el Oeste la agua de las mesteñas, es de entender q. esta peticcion la ago con respecto a estar baldio el Terreno y amanos muertas. y ser sin perjuicio de Tersero, y no Tener donde pasteen mis animales q. son algunos, Con este motivo me indispensable aserlo; y si meresco Tal grasia q. sea á mosion de recompensa alos servicios q. dejo referidos, y por lo Tanto suplico a

V. E. q. si seme ase esta concepcion sea libre y saniada de contri vusion, Por Todo lo cual;

[On margin:] A. V. E.

Rendidam.te pido y suplico se sirva en merito de Justiccia acceder á esta mi solisitud en lo q.e recivire mersed y gracia inpetro. Juro no proceder de malicia en esta causa, protesto la buena Fé constas y lo nesesario. &a.

Alburquerque Dbre. 5. de 1845.

ANT°. SANDOVAL.

71 SANTA FÉ *Dbre.* 7 *de* 1845.

Convensido este Gobierno de los analagos servicios que D. Ant°. Sandoval a hecho y esta asiendo a la Patria; asi en el tiempo que sirva, como em seis años que sirvio desempeñando la Prefactura del 2°. Dis°. con la doctacion de mil quinientos pesos de lo que no sele a pagado ni un medio rial; p.r esto que asiende la suma, de nueve mil pesos, y siendo efectivo lo que consta en la presente Ynsta, y husando de las facultades que me conseden las Leyes, y asi en merito de todo como con justo titulo adquirido, le hago la concepcion del terreno que solisita con todas sus Diminciones y exidos qu pide, para que en nombre del Supremo Gov.no de la Nacion Mejicana, y con mi disposisin lo pueda gosar libre y franco de Toda Pension, y libre de todo senso.

MAN.L. ARMIJO.

[Endorsed:] No. 1. A. File 10.

72 Sello cuarto (sello) una cuartilla.

Para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Abiltado para los años de 1844 y 1845.

Jose Serafin Ramires y Casanoba Contador de la Tesoreria Departamental. de Nuevo Mejico y Tesorero Ynterino dela misma:

Certifico; a pedim.to del Sr D.n. Antonio Sandobal Ser berdad que hase el espasio de 40, años segun consta de los Rejistros en los Libros de la Tesoreria) que el Sr. D.n. Ant°. esta prestando Serbicios ala Nacion Como Militar y Empleado Cibil: Como asi mismo Consta que ha prestado muchas cantidades de Din°. alas Cajas dela Nacion sin grabamen de un medio Real y que hasta la fhâ. se le estan deviendo Cresidas sumas segun las constancias que obran en esta Oficina y en pódel del Ynteresado prosedentes de sueldos, y prestamos. Y para Consta, ° Estiendo la presente en Santa Fe hoy 6 de Dbre de 1845.

JOSE SERAFIN RAMIRES. [RUBRICA.]

[Endorsed:] B. File 10. Comptroller's certificate.

73 En este punto de la Estansia á los quinse dias del mes de Dbre de este presente año de mil ochosientos cuarenta y cinco: yó José Baca y Ortiz Juez de Páz del Real del oro en obedecimiento

al decreto del Exmo. Sor. Govor sobre la consepcion de terreno que hase libre de todo Senso y franco pasé al espresado terreno en compañia de dos tgos. de mi ass^{a}. ha Demarcar los limites y linderos que se consedieron al impetrante; y haviendo tenido presente al Ciudadano Juan Antonio Aragon que hase la persona de D. Antonio Sandoval le hise ber la peticion q. asia y que para mejor seguridad delos intereses havia de mantener fuerza de hombres con buenas armas por lo q. pueda sobrebenir el que entendido de todo lo referido lo tomé por la mano y dijo en clara y inteligibles Voces que en nombre del Soveran Congrso de la Union se le daba en posecion el espres do terreno el q. tomó quieta y pasificam^{te}. sin contradicion alguna, y tiro piedras árrancó Sacate y dió Voces de alegria diciendo Viva el Soverano Congreso de la Nacion Mejicana: asu consecuencia se le Señalaron los linderos q. son por el Norte una legua del Ojo del Berrendo, quedando dentro de la posecion el sitado ojo, por el Sûr de las lagunas de Sál otra legua quedando tambien dentro las mismas lagunas; por el oriente los Serritos del Pedernal con su cordillera, y por el poniente la agua delas Mesteñas; y por lo tanto haviendo que dado la parte interesada satisfecha y conforme con la gracia yconsesion q. se le ha hecho le estendi el presente documento de posecion para su constancia en todo tiempo y que le sirva de formal titulo; y para su mayor balidacion interpongo la autoridad q. por dro me és conferida, firmandolo en dicho dia mes y año con los tgos. de mi ass^{a}. á falta de Escribano Publico q. no lo hay y en el presente papel comun por la falta del del Selio q. corresponde, pero se obliga la parte el agregarlo aysiado de todo doy fee.

JOSE BACA. [RUBRICA.]

De ass^{a}.:
JOAQUIN SOMOHANO. [RUBRICA.]

De ass^{a}.:
PABLO DELGADO. [RUBRICA.]

Registrado en el Libro letra B, folio 166, y 167: lo que lo
74 que certifico para constancia. Santa Fé, Noviembre 17, de 1849.

DONACIANO VIGIL. [RUBRICA.]
Registrador.

[Endorsed:] No. 2. C. File 10. Posecion de terreno para hacienda en favor del Sr D. Antonio Sandocal. Ano de 1845.

75 (PLAINTIFFS' EXHIBIT "A.")

Translation.

Third seal (seal) one dollar.

Years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

Most excellent governor:

I, citizen Antonio Sandoval, resident of the town of Alburquerque before the upright justice of Your Excellency in due legal form appear and state: Sir, that considering that it is now the number of thirty years and more that I am rendering service to the country as well with my person as with my property, as up to this time is clear and evident, without having in any — interposed the least objection thereto, and without having on that account been paid any compensation for my services, wherefore, in view of what has been set forth, I proceed, if I am justified in doing so, to pray that Your Excellency in your benevolence be pleased in the name of the supreme authority of the Mexican nation, to do me the favor and grace to grant me in possession *integram* the Salt Lakes tract, assigning as boundaries toward the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and towards the south from the Salt lakes another league, on the east the little hills of the Pedernal, and on the west the water of the Mesteñas. It is understood that I make this petition because the land is vacant and in a condition of mortmain, as to do so is without prejudice to any third party and because I have not where to pasture my live stock, which is considerable. For this reason it is imperative for me to do so, and if I deserve the favor let it be done in com-
76 pensation for the services I have referred to, and for the same reason I ask Your Excellency that if this grant be made to me, it be free and exempt from tax.

In consideration of all which I humbly ask and pray Your Excellency for the sake of justice to accede to this my prayer whereby I will receive the favor I seek. I declare that I act not in dissimulation in the premises, covenant good faith, to pay costs, and do whatever be necessary, etc.

ANTONIO SANDOVAL.

Alburquerque, December 5, 1845.

SANTA FÉ, *December* 7, 1845.

This government being convinced of the valuable services Don Antonio Sandoval has rendered, and is now rendering the country as well during the time to which he refers as also during the six years he served administering the prefecture of the 2nd district with the salary of one thousand five hundred dollars of which not even a half real has been paid to him, the sum due him amounting to nine thousand dollars, and the statements in this petition being true,

I do, in exercise of the power in me vested by the laws, and also in consideration of all the premises and as a just title acquired, make to him the grant for the land he solicits, with all the dimensions and pasture land he asks, that he may enjoy the same in the
77 name of the supreme government of the Mexican nation and under my concession free and exempt from all tax or tribute.

MANUEL ARMIJO.

Seal fourth (seal) one-fourth real.

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

Qualified for the years 1844 and 1845. (Rubric.)

I, Jose Serafin Ramirez y Casanoba, comptroller of the departmental treasury of New Mexico and acting treasurer of the same, do certify at the request of Antonio Sandoval, that during the period of forty years (as appears from the record of the books of the treasury) Don Antonio has been serving the nation as a military and civil officer. It also appears that he has loaned numerous sums of money to the treasury of the nation without receiving one-half real interest, and that there are now large sums due him, as appears from the entries in this office and the evidences in possession of the parties interested, on account of salaries and loans.

And in testimony thereof I issue this certificate at Santa Fé, this 6th day of December, 1845.

JOSE SERAFIN RAMIREZ.

78 At this place, La Estancia, on the fifteenth day of the month of December in the present year one thousand eight hundred and forty-five: I, Jose Baca y Ortiz, justice of the peace of Real del Ore, in obedience to the decree of the most excellent governor concerning the grant of land he makes exempt and free from all tribute, proceeded to the aforementioned land in company with my two attending witnesses to mark the limits and boundaries which are granted to the petitioner and having caused the citizen Juan Antonio Aragon, representing the person of Antonio Sandoval, to be present, I exhibited to him the petition the latter had made and stated that for the greater security of his interest he should maintain a force of men with good arms to be ready for an emergency, and he being fully informed of the above, I took him by the hand and declared in plain and intelligible words that in the name of the sovereign Congress of the Union the aforesaid land was given to him in possession which he received quietly and peaceably without any objection, and he cast stones, plucked up grass and shouted with joy saying Long live the sovereign Congress of the Mexican nation; whereupon he was shown the boundaries which are on the north one league from the Berrendo spring, the said spring being included in the possession; on the south one league from the Salt lakes, the Salt lakes also being within; on the east the little hills of the Pedernal with its range; and on the west the water of the Mesteñas. Wherefore, the party

interested being satisfied and contented with the favor and concession which has been made to him, I did, in testimony thereof in
79 all time to come, execute to him the present document of possession that it may serve him as formal title, and for its greater validity, I interpose the authority conferred upon me by law, signing the same on said day, month and year with my attending witnesses, for lack of a notary public, there being none, and on this common paper for want of that having the proper seal, the party, however, binding himself to attach it at his expense; to all of which I certify.

JOSE BACA.

Attending:
JOQN. TOMOHANO.

Attending:
PABLO DELGADO.

Recorded in book letter B, pages 166 and 167; to which I certify that it may so appear.

DONACIANO VIGIL, *Recorder.*

Santa Fé, Nov. 17, 1849.

80 (PLAINTIFFS' EXHIBIT 5.)

El Condado de Bernalio Territorio del Nuevo Mejico, alos ocho Dias del, mes de Julio del año de mil ochosientos Cuarenta y ocho, yo el infrascrito livre y voluntariamente, estando en mi pleno y entero Juicio, por el presente, declaro que es mi voluntad dognar con efecto dogno, Libre y Legalmente a mi sovrino Gervasio Nolan, la propiedad delas lagunas de Sal q. me fue dada y consedida por el Gob.or del Departamento de Nuevo Mejico en nombre del Supremo Govierno de Mexico, el dia 7 de Disiembre A. D. 1845, segun lo acredita el anterior Titulo de donasion marcado con letra A: por lo q. Traspaso en la persona del referido Nolan todo el Drô. ausion y senorio q. en dhô. Terreno Tenia para que lo gose como su legitima piedad, cuyos linderos son por el Norte una legua al Norte del ojo del Berrendo, por el Sur se estiende a una legua al Sur delas mismas lagunas de Sal; por el Oriente alos serritos del pedernal; y por el poniente, ala agua de las Mesteñas, y si algo tuvieren mis desendientes y asendientes q. oponer sobre esta dona suplico a los M Magistrados no sean hoydos en Juicio ni fuera del, pues que ási á sido mi voluntad y quiero q. se haga firme y valederá las voses de esta Escritura Traspasada, y que ygualm.te quiero q. gose el citado Nolan el mencionado Terreno libre de senso, Trivuto y poteca ú otra enagenacion, tanto el como su Esposa he hijos herederos y subsesores sin q.e haya quien le ponga pleyto ni emvaraso alguno en ningun tiempo, y para su devida Constancia y sér sierto todo lo agui estipulado lo Signo y firmo hoy dia dela fhâ.

ANTONIO SANDOVAL. [RUBRICA.]

TERRITORIO DE NUEVO MEJICO, }
Condado de Bernalillo. }

Por el presente Certifico q. el Hn. Antonio Sandoval comparecio presente en su propia persona el cual es personalmente conosido del Ynfrascripto Secretario dela corte de Circuito del Condado de Bernalillo por ser la persona cuyo nombre esta firmado arriva de
81 su propio puño y declaro y confieso que el antecedente documento es un acto de su libre voluntad selebrado por el fin y propocito, por el mismo mencionado arriva; y por constancia firmé de mi mano y seloo este certificado en Alvurqq.e a 8.e de Julio A. D. 1848.

[SELLO.] JOSE FELIX BENAVIDEZ,
Secret.° [RUBRICA.]

[Endorsed:] No. 3. D. File 10.

82 (PLAINTIFFS' EXHIBIT 5.)

Translation.

In the county of Bernalillo, Territory of New Mexico, on the eight day of the month of July in the year one thousand eight hundred and forty-eight, I the undersigned, freely and voluntarily, being of complete and sound mind, do hereby, declare that it is my will to donate, as I do in effect donate, freely and legally onto my nephew Gervacio Nolan, the property of the Salt lakes, which was given and granted to me by the governor of the department of New Mexico, in the name of the supreme government of Mexico, on the 7th day of December A. D. 1845, as evidenced by the foregoing deed of grant, marked with the letter "A" in virtue whereof I convey unto the aforesaid Nolan all the right title and dominion held by me in said land, that he may enjoy the same as his lawful property the boundaries of which are: On the north: one league north of the Berrendo spring; on the south: it extends one league south of the said Salt lakes; on the east the little hills of the Pedernal; and on the west to the water of the Mesteñas and if my descendants or ascendants should raise any objection to this donation, I pray the majistrates that they be not heard in court or out of it; for such has been my will and I desire, the words of the instrument of conveyance to be made durable and binding, and I also desire that aforesaid Nolan shall enjoy the said land free from tax, tribute, mortage or other incumbrance, as well himself as his wife, children, heirs, and successors, without there being any one to interpose against him any suit or other opposition at any time. And for the due evidence hereof, and for the truth of all herein stipulated I sign and subscribe this on this the day of its date.

ANTONIO SANDOVAL.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

I hereby certify that the Honorable Antonio Sandoval appeared present in his proper person, he being personally known to the

undersigned clerk of the circuit court for the county of Bernalillo to be the person whose name is signed above with his own hand and declared and acknowledged that the foregoing document is an act
of his own free will, executed for the object and purpose men-
83 tioned by him as above, and in testimony I signed with my hand and seal this certificate at Alburquerque the 8th day of July A. D. 1848.

[SEAL.] JOSE FELIX BENAVIDES, *Clerk.*

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT.
SANTA FÉ, N. M., *January* 23, 1861.

The foregoing is a correct translation of the original in Spanish on file in this office.

DAV. J. MILLER, *Translator.*

84 (PLAINTIFFS' EXHIBIT 6.)

UNITED STATES OF AMERICA, }
Territory of New Mexico, County of Santa Fé, } ss:

The undersigned, Maria de Los Dolores Noland, widow of Gervais Nolan, for herself and as guardian of her two minor children, Antonio Noland and Francisco Noland; Fernando Noland, Eugenio Noland, Maria Leonore Noland, Maria Manuela Martina Delgado, and Maria Irenea Delgado, the two last being minors, by their guardian, Pablo Delgado, would respectfully represent to the surveyor general of said Territory, by their attorney, Theodore D. Wheaton, that they are the only heirs of said Gervais Noland, now deceased, formally of the county of Taos, in said Territory.

That they, the said heirs, are residents of said Territory; that the said Gervais in his lafetime filed for examination and confirmation a claim to a certain tract of land situated, lying, and being in the county of Valencia, in said Territory, the same having been granted by Manuel Armijo, formerly governor of said Territory, to Antonio Sandoval on the seventh day of *of* October, A. D. 1845.

That the said land was granted as aforesaid to said Antonio Sandoval for services rendered to the Mexican government, as will appear by document marked (N. 1); that the said Armijo during the time he was governor, as aforesaid, granted said land by virtue of the authority vested in him by the Mexican government, which authority will appear by the collection of statutes and decrees of the aforesaid government, and also by communications addressed to the aforesaid governour by the authorities of the Mexican government, which said communications are to be found in the archives of the Territory, and to which reference is here made. The boundaries of
said tract of land are as follows (to wit): On the north, one
85 league from the Berrendo spring, the said spring being within the boundaries of said grant; on the south, one league from the salt lakes, including said lakes; on the east, the range of moun-

tains and hills of the Pedernal; and on the west, the waters of the Mesteñas.

The said grant of land is situated in the Territory aforesaid and in the county of Valencia, and the possession was duly given by the justece of peace of the Real del Oro in the aforesaid year, 1845, as will be seen by reference to document marked No. 2.

The undersigned further state that all the right, title, and interest of the said Antonio Sandoval to the aforesaid tract or parcel of land was legally transferred and conveyed by said Sandoval to said Gervais Noland on the eighth day of the month of July, A. D. 1848, as will appear by the document marked No. 3. They further state that they are unable to furnish a plat of survey of said tract, as such survey has never been made.

The undersigned, being the present owners of the aforesaid tract, respectfully pray that the same be confirmed to them and a patent issue in their favour accordingly.

THOS D. WHEATON,
Att'y for Claimants.

[Endorsed:] File 10. Notice. Heirs of Gervacio Nolan. Claim to land in Valencia county, New Mexico. Amended petition. This document is duly recorded on pages 50 & 51, vol. 4, of Land Claim Records, in office of surveyor general.

86 (PLAINTIFFS' EX. 7.)

ANTONIO SANDOVAL, by Assignee, *vs.* UNITED STATES. } Before Surveyor General.

Pablo Delgado, lawful age, sworn & states:

I know the signature of Man'l Armijo, and the one shown me on doc. No. 1 is genuine, and the signature of Antonio Sandoval on same doc. is also genuine, and at the date of said doc. Manuel Armijo was gov. & commander-in-chief of New Mexico. I was present when the alcalde (Jose Baca) put Sandoval in possession of the land, and all the signatures to doc. C are genuine. The signature of A. Sandoval in doc. No. 3 is genuine. Gervacio Nolan is now dead, but his wife, Maria de los Dolores, is still alive. I know Francisco and Antonio Nolan, sons of said Gervacio and minor children now living in New Mexico.

I know also Fernando and Eugenio Nolan, also Maria Leonor Nolan, children of said Gervais Nolan, residents of this Territory, in the county of Mora. I know Maria Manuela Martina Delgado and Maria Irenea Delgado, minors and grandchildren of said Gervacio Nolan. The above are the only descendants of said Gervacio Nolan, who died about 3 years ago, and intestate.

PABLO DELGADO.

Sworn and subscribed January 10, 1861.

A. P. WILBAR, *Sur. Gen'l.*

87 (PLAINTIFFS' EXHIBIT 8.)

This indenture made the first day of January one thousand eight hundred & fifty between Jarvis Nolan of the first part and Rufus Beach both of Santa Fé of the other part witnesseth that the said party of the first part for and in consideration of the rents & covenants hereinafter contained hath and by these presents doth rent and to farm let to the said party of the second part, all that tra-t of land including the Salt lake in New Mexico about eighty miles southerly from Santa Fé and bounded as follows on the north one league north of the water of the Berrendo, on the south one league south of the Salt lake, on the east by the Flint mountain, on the west by the water of the Mesteñas, according to a deed of the same executed by Antonio Sandoval to the said Nolan dated the eight day of July 1848 in which reference is made to a grant from the governor of New Mexico to said Sandoval bearing date the 7th day of December 1845 with the privilege of occupying and renting to others all or any part of said premises for the term of five years.

To have and to hold the same in as full and ample a man-er as I am intitled to hold the same by the said grant & deed aforesaid unto the said Rufus Beach his heirs and assigns for the term of five years fully to be complete and ended. And the said Biach hereby covenants to occupy said premises for agriculture and procuring salt from the lake and to construct one or more house or houses and corral for the convenience of workman and the herding of stock on the prem-ses and to pay all Government taxes which may be assessed on all such part or parts of said premises as he shall oc-upy, and at the end of said term surrender said premises with all the improvements thereon to said Nolan.

And the said Nolan covenants and agrees that on condition
88 that the said Beach is successful in improving the premises and makes them valuable then the said Beach shall be intitled to the equal half part of the rents & profits of the same for the five years next ensuing the term of this lease.

Witness our hands & seals the day & year above written.

JARVIS NOLAN. [L. S.]
RUFUS BEACH. [L. S.]

Test:
M. ASHURST.
M. F. TULEY.

[Endorsed:] File 10. Jarvis Nolan to R. Beach. Lease, a copy of which I gave to R. Beach. This document is duly recorded on pages 63 & 64, vol. 4, of Land Claim Record, in office of surveyor general.

89 (PLAINTIFFS' EXHIBIT 9.)

ANTONIO SANDOVAL.

La Estancia Tract.

This claim for a grant of land comes before me for recommendation to Congress under the treaty of Guadalupe Hildago (eighth and ninth articles) and the act of Congress, 22 July, 1854, establishing this office.

It was filed in this office July 12, 1855, by Gervacio Nolan, who died in 1858, as assignee of the grantee, Sandoval, and his legal representatives now ask approval and confirmation. Testimony was taken before one of my predecessors in 1861, but no final action taken in the case, on account, as is stated, of divided action and trouble among the heirs and other causes preventing until this time.

The original documents in Spanish, which are genuine beyond all doubt, show that the grant was made by Manuel Armijo, then the lawful and recognized governor of New Mexico under the Republic of Mexico, on the 7th December, 1845, to Antonio Sandoval, in accordance with Sandoval's petition of 5th December, 1845. The petition requests and the governor decrees that the grant be absolute, for value received in services performed for and moneys loaned to the government of Mexico by the said Sandoval, and that it be "free and exempt from all tax and tribute."

On 15th December, 1845, Sandoval was duly placed in possession of the property by Jose Baca, a justice of the peace, and he and his legal representatives have so remained, it is believed, to this time without dispute or question. It is a matter of history and common notoriety that Don Antonio Sandoval was, under the Mexican rule, a man of great activity, wealth, and influence, and that his government owed him for many years large sums of money, which it was either unable or uuwilling to pay him. (See comptroller's certificate in the case.)

The boundaries of the grant are as follows: "Towards the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and towards the south from the Salt lakes another league; on the east the little hill of the Pedernal and on the west the water of the Mesteñas."

The boundary calls are well-known natural objects and the location is certain. No survey of it has been made, but it is
90 reputed to contain about 300,000 acres. On 8th July, 1848, Sandoval deeded the property (see deed in evidence) to Gervacio Nolan, who was his nephew.

I am of opinion that this title is perfect in the legal representatives of Gervacio Nolan, deceased, and recommend that it be confirmed by Congress accordingly.

A complete transcript of the record is herewith submitted.

JAMES K. PROUDFIT,
Surveyor General.

U. S. surveyor general's office, Santa Fé, New Mexico, January 4, 1873.

91 PLAINTIFFS' EXHIBIT B.

This indenture, made and entered into this twenty-third day of September A. D. one thousand eight hundred and eighty by and between Maria de los Dolores Lolanda y Nolan of the county of Mora, Territory of New Mexico, Fernando Nolan and Iulianita Nolan his wife, of the county of Mora, Territory aforesaid, Leonora Nolan of the county of Mora and Territory aforesaid, Eugenio Nolan of the county of Mora and Territory aforesaid, Antonio Nolan and Andrea Nolan his wife, of the county of Mora and Territory aforesaid, Francisco Nolan, of the county of Mora and Territory aforesaid, Maria Manuelita Martina Delgado y Baca, Francisco C. de Baca, her husband, of the county of San Miguel and Territory aforesaid and Maria Erinea Delgado y Romero and Margarito Romero her husband, of the county of San Miguel, Territory aforesaid, parties of the first part, and Joel P. Whitney of the city and county of New York and State of New York, party of the second part: witnesseth, that the said parties of the first part for and in consideration of the sum of twenty-seven thousand five hundred dollars ($27,500) lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, remised, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, remise, convey and confirm unto the said party of the second part, and to his heirs and assigns forever in fee-simple, all that certain grant or tract of land, situate, lying and being in the county of Valencia in the Territory of New Mexico, and more particularly bounded and described as follows, to wit: Towards the north one league from the Berendo springs, the said Berendo springs being included within the possession and boundaries of said grant and tract of land; on the south one league from the Salt lakes, the said Salt lakes also being within the possession and boundaries of said tract of land; on the east the little hills of
92 the Pedernal with its range; and on the west the waters of the Mestenos—the said grant and tract of land being a certain grant of land known as the Estantia grant or Salt Lakes tract made to one Antonio Sandoval on the seventh day of December A. D. one thousand eight hundred and forty-five by Manuel Armijo then governor of the Mexican Territory of New Mexico, pursuant to the petition of said Sandoval dated on the fifth day of December A. D. one thousand eight hundred and forty-five, and judicial possession thereof given to the said Antonio Sandoval on the fifteenth day of December A. D. one thousand eight hundred and forty-five by José Baca y Ortis then justice of the peace of the Real del Oro which said grant and tract of land was sold and conveyed by the said Sandoval to one Gervacio Nolan on the eighth day of July one thousand eight hundred and forty-eight, and the title papers thereof thereafter in the year one thousand eight hundred and fifty-five presented to the United States surveyor general for the Territory of New Mexico

under and pursuant to the provisions of the act of Congress approved the twenty-second day of July A. D. one thousand eight hundred and fifty-four, and the said grant approved by the said surveyor general on the fourth day of January A. D. one thousand eight hundred and seventy-three, as more fully and at large appears by the original title papers, deed of conveyance, report and papers pertaining to said grant on file in the office of said surveyor general, to which said original title papers and deed, reference is hereby made for further and better description of said grant and tract of land and the boundaries thereof. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, in law as well as in equity of the said
93 parties of the first part, of, in and to the same, and every part and parcel thereof with the appurtenances.

To have and to hold, the above granted, bargained, sold and described premises with the appurtenances unto the said Joel P. Whitney and his heirs and assigns to and for their own proper use, behoof and benefit forever. And the said parties of the first part for themselves, their heirs, executors and administrators, do covenant and agree to and with the said party of the second part, his heirs, administrators and assigns, that they, the said parties of the first part their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest of, in or to the hereinbefore granted, bargained, sold and described premises, by, from, under or in trust for them or either of them, shall and will at any time or times hereafter upon the reasonable request and at the proper cost and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute and cause to be made, done and executed all and every such other and further lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns forever as by the said party of the second part, his heirs or assigns or his or their counsel, learned in the law, shall be reasonably advised or required. And also the said parties of the first part, for themselves, their heirs, executors, administrators and assigns do covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that they the said parties of the first part, their heirs, executors, administrators and assigns, the above-described and hereby granted, bargained, sold, and released premises and every part and parcel thereof, with
94 the appurtenances unto the said Joel P. Whitney, his heirs and assigns, against the said parties of the first part, their heirs or any of them and against all and every person or persons whomsoever, claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MARIA DE LOS DOLORES
her
LOLANDA NOLAN x
mark.
FERNANDO NOLAN.
her
IULIAZATA x NOLAN.
mark.
EUGENIO NOLAN.
ANTON. NOLAN.
her
ANDREA x NOLAN.
mark.
her
LEONOR x NOLAN.
mark.
FRANCISCO NOLAN.
FRANCO. C. DE BACA.
MARIA MANUEL MARTINA
DELGADO DE BACA.
MARGARITO ROMERO.
IRENEA DELGADO Y ROMERO.

Signed, sealed, and delivered—
MARCELINO ABEITIA.

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

On this the twenty-third day of September, A. D. one thousand eight hundred and eighty, before me, the undersigned, personally appeared Maria de los Dolores Lolanda y Nolan, Fernando Nolan, Iulianita Nolan, Eugenio Nolan, Antonio Nolan, Andrea Nolan, Leonora Nolan, Francisco Nolan, to me well known to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged that they signed, sealed, and executed the same for the uses and purposes therein mentioned, and the said Maria de los Dolores Lolanda y Nolan, wife of Gervacio Nolan, deceased, and the said Iulanita Nolan, wife of Fernando Nolan, and the said Andrea Nolan, wife of Antonio Nolan, having been by me examined separate and apart from their said husbands, and the contents of said deed having been by me
95 first read and explained to them and each of them, they each acknowledged that they signed, sealed, and executed the same as their own act and deed, freely, voluntarily, and without compulsion or the illicit influence of their said husbands respectively.

In witness whereof I hereunto set my hand and seal the day and year last above written.

T. B. MILLS,
Notary Public.

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

On this the twenty-third day of September, A. D. one thousand eight hundred and eighty, before me, the undersigned, personally appeared Maria Manuelita Martina Delgado y Baca and her husband, Francisco C. De Baca; Maria Irenea Delgado y Romero and her husband, Margarito Romero, to me well known to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged that they signed, sealed, and executed the same for the uses and purposes therein set forth, and the said Maria Manuelita Martina Delgado y Baca and Maria Irenea Delgado y Romero having been before me examined separate and apart from their said husbands, and the contents of said deed having been by me first read and explained to them and each of them, they each acknowledged that they signed, sealed, and executed the same as their own act and deed, freely, voluntarily, and without compulsion or the illicit influence of their said husbands respectively.

In witness whereof I have hereunto set my hand and seal the day and year last above written.

T. B. MILLS,
Notary Public.

Recorded this 2nd day of October, A. D. 1880.
MANUEL R OTERO,
Clerk and ex Officio Recorder.

96 I certify that the foregoing is a true and correct copy from Record Book "A" 4, pages 485 to 489, both inclusive.
Los Lunas, N. M., November 21st, 1883.
MANUEL R. OTERO,
Probate Clerk,
[SEAL.] By PAUL D. STONE, *Deputy.*

[Endorsed:] Certified copy of deed of Estantia grant to J. P. Whitney. Sept. 23, 1880.

97 Know all men by these presents: That I, Joel P. Whitney of the city and county of New York and State of New York, in consideration of thirty thousand dollars paid by Franklin H. Story, of Boston, county of Suffolk, Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said Story one undivided half part of the following-described premises, situated and being in the county of Valencia in the Territory of New Mexico, and bounded as follows, to wit: Towards the north one league from the Berendo springs, the said Berendo springs being included within the possession and boundaries of said grant and tract of land; on the south one league from the Salt lakes, the said Salt lakes also being included within the possession and boundaries of said grant and tract of land; on the east the little hills of the Pedernal with its range; and on the

west the waters of the Mestenos; the said grant and tract of land being a certain grant of land known as the Estantia grant or the Salt Lakes tract, made to one Antonio Sandoval on the seventh day of December, A. D. one thousand eight hundred and forty-five, by Manuel Armijo, then governor of the Mexican territory of New Mexico, juridical possession thereof being taken by said Sandoval on the fifteenth day of December, A. D. one thousand eight hundred and forty-five, and by said Sandoval sold and conveyed to one Gervacio Nolan on the eighth day of July, A. D. one thousand eight hundred and forty-eight, the title papers thereto having been approved by the surveyor general of the Territory of New Mexico on the fourth day of January, A. D. one thousand eight hundred and seventy-three, and to me sold and conveyed by the heirs of said Nolan in fee-simple by deed dated the twenty-third day of September, A. D. one thousand eight hundred and eighty, and recorded in the county records of Valencia county, Territory of New Mexico, at Belen *in* the second day of October, A. D. one thousand eight hundred
98 and eighty, all of which above-mentioned transaction appears more fully and at large, by and in the original title papers, deed of conveyance, report and papers pertaining to said grant, on file in the office of said surveyor general, and — which said original title papers, deed of conveyance, report and papers, reference is hereby made for further and better description of said grant and tract of land and the boundaries thereof.

To have and to hold, the above-granted premises, with all the privileges and appurtenances to the same belonging to the said Franklin H. Story, of Boston aforesaid, his heirs and assigns, to their own use and behoof forever. And I, the said grantor, for me and my heirs, executors and administrators do hereby covenant with the said grantee and his heirs and assigns that the released premises are free from all incumbrances made or suffered by me, and that I will and my heirs, executors and administrators shall warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under me, but against none other.

In witness whereof, I set my hand and seal at Boston aforesaid this sixth day of November A. D. one thousand eight hundred and eighty.

J. P. WHITNEY. [SEAL.]

Signed, sealed, and delivered in presence of—
SAMUEL JENNISON.
THOMAS HARNEY.

COMMONWEALTH OF MASSACHUSETTS, } ss:
County of Suffolk, City of Boston, }

On this sixth day of November, A. D. 1880, before me, the undersigned, Samuel Jennison, a commissioner of the Territory of New Mexico, residing in the city of Boston, duly commissioned and qualified by the governor and under the laws of said Territory to take the acknowledgements of deeds, etc., to be used and recorded therein,

personally came Joel P. Whitney, to me personally known to
99 be the same person whose name is signed to the foregoing instrument and who is party thereto, and acknowledged that he signed, sealed, and executed the same freely and voluntarily for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal, at said city of Boston, this 6th day of November, A. D. 1880.

[SEAL.] SAMUEL JENNISON,
Commissioner for New Mexico in Boston.

Recorded this 21st day of December, A. D. 1880.

MANUEL R. OTERO,
Clerk and Recorder.

I hereby certify that the foregoing is a true copy from Record Book "A" 4, pages 498, 499, and 500.

MANUEL R. OTERO,
Probate Clerk,

[SEAL.] By PAUL D. STONE, *Deputy.*

Los Lunas, N. M., November 22, 1883.

[Endorsed:] Estancia land grant. Certified copy of deed from J. P. Whitney to F. H. Story. Nov. 6, 1880.

100 (PLAINTIFFS' EXHIBIT "C.")

IRA M. BOND, a witness on behalf of defendant, was introduced and testifies as follows:

By Mr. REYNOLDS, U. S. attorney:

Q. State your name, age, and occupation.

A. Ira M. Bond; Albuquerque; deputy sheriff.

Q. How long have you resided in the Territory of New Mexico?

A. Since 1869.

Q. What, if any, official position did you occupy in this Territory in 1869 and 1870?

A. I was appointed by Governor Pile territorial librarian.

Q. Now, state to the court, and state it fully, the history of the destruction or disposition of a part of a records or archives, or whatever they may be called, that were in the possession of the territorial librarian in the years 1869 and 1870.

A. Adjoining the governor's office, in the rear, I had—it was directly opposite the governor. Across the hall there were a large amount of refuse papers. It seemed the room had been used as an outhouse to a large extent. The pungent fumes that arose from the room was very offensive to the governor, and he ordered me to take the papers out in the ward and burn them. As the books in the library were at that time placed down on the dirt floor, I suggested that if we could sell a few of those old papers and get enough money we might put a floor in part of the library and save some of the things, as we

had no shelving, and we tried to get subscription from some of the citizens to get some shelving, but did not succeed. The governor told me to see if I could dispose of some of those papers for that purpose, or else burn them. I went around to some of the merchants. They said that they were valueless, but they could use them for covering—wrapping. One merchant said he would take a barrel of them. I sent one barrel over to his store, and he used some of them, I believe, for wrapping up some purchases. In a few hours some of the papers got out in town. People receiving them noted the writing on them, and it created quite a talk. Some of the papers had some old dates. After several hours spoke to me again and said I had better recover the papers. I replied I would try and get them back again, and I went and got the papers and took them back. They were preserved. Later, I understand, the legislature passed
101 an act to have them preserved and translated. I don't know anything further.

Q. Were there more than one barrel of them sold?

A. About a barrel, and I think we got back all except four or five pounds of them.

Q. What was the general nature and character of these papers?

A. In my opinion, as clerk of a Missouri legislature, I have seen thousands of pounds of such thrown away. It was between the governor's office and the legislative hall, and I think it was the same class of material.

Q. Do you know whether there was any public grants—land grants—amongst them?

A. I saw nothing of that kind or nature. They seemed mostly legislative printed bills—some that had been introduced and printed, but never passed—and some refuse matter from the governor's office.

Q. Then you think you got most of the papers that you disposed of back?

A. Yes, sir; all except a very few pounds. I never heard of any person having received any but what I recovered them.

Q. During this excitement over the disposal of the papers, after you had recovered part of them back, was there a discussion or any claim made by anybody that any land grants or titles to lands from the Government were missing?

A. I never heard of anything of that kind at all. I know they were talking that they were papers of old dates, but I put no special value on them. They were in Spanish. Governor Pile ordered me to burn them, and I suggested that we try to dispose of a few——

Q. Did you have a suit in the district court of the Territory to recover some of them?

A. It was so long ago I don't remember about it. Yes, sir.

Cross-examination by Mr. FROST, plaintiffs' attorney:

Q. Did you understand the Spanish language in 1869?

A. No, sir.

Q. These papers were in the Spanish language?

A. Those that I paid any attention to were in the Spanish language.

Q. Were they written or printed?

A. Some printed; some written.

Q. Did they look old or new?

A. Some looked old; some practically new.

Q. Didn't I understand you to say that the legislature recently made an appropriation to have these papers examined—some of those that were left?

A. Those were papers which I have heard of. I don't know it of my own knowledge.

Q. What was the cause of all that excitement at that time about these papers?

A. I only heard that some of the papers had old dates on them.

Q. The people deemed it such a matter as to condemn the action of the governor. You remember that, don't you?

102 A. I don't remember that. I heard talk around town.

Q. But you do remember that you got back all but a few pounds of those papers?

A. I think I got back all, with the exception of three or four pounds.

Q. How long ago was that date? You say you don't remember anything about the indignation meeting, but you do remember about the three or four pounds?

A. Yes, sir.

Q. If an indignation meeting had been held about that time would you have known anything about it?

A. It might have been held.

Q. You have been a newspaper man for a good many years, and you are pretty well acquainted with the history of New Mexico for past twenty-five years?

A. Yes, sir.

Q. And you are pretty well acquainted with public men?

A. Yes, sir.

Q. Was Santa Fé a pretty large town at that time?

A. I should judge it was nearly as large as it is now.

Q. How often did you get mail?

A. I don't just remember now whether it was once a week or twice a week; sometimes only two or three times a month.

Q. Such a thing as an indignation meeting against the governor would, of course, have excited your notice, when right in front of the governor's and where you had your office, and where the governor's was, and where these papers were?

A. I can't tell.

Q. Did you ever hear that there were any land grants among these three or four pounds that was missing?

A. I never heard that anything was found.

Q. No one ever come and told you?

A. No, sir.

Q. But you don't know of your own knowledge?

A. No, sir.

Q. That there might have been grants amongst them?

—. ——.

Q. Your experience in the Missouri legislature did not give you opportunity to examine or know anything about Mexican land grants, did it?

A. No, sir.

Q. How old were you in 1869, when this thing happened?

A. Twenty-five or twenty-six.

Q. You had some experience in the newspaper line; were you in the newspaper business at that time?

A. Only occasionally writing for the New Mexican.

Q. Did not the New Mexican have an account of that?

A. I don't remember now.

Q. You wrote for it pretty regularly, didn't you?

A. Yes, sir; I generally did.

Q. Who was the United States attorney in 1869?

A. I don't exactly remember.

Q. Who was secretary of the Territory?

A. I don't know.

103 Q. Who was United States marshal?

A. I don't know.

Q. How much money did you get from that merchant to whom you sold those papers?

A. I think it was probably a dollar and a half or two dollars.

Q. Now, as a newspaper man, how much were these papers worth by the pound?

(To which question the attorney for the United States objected as immaterial; which objection was by the court overruled.)

A. I sold a barrel full; I returned him the money and took the barrel back, all except two or three pounds.

Q. Do you remember who you sold them to?

A. It was a merchant on the plaza, named Davus.

Q. Do you remember where his store was situated?

A. I think it was near where the Second national bank is located now.

Q. How many banks were there in existence at that time in this city?

A. Not any.

Q. And you say you got back all but five pounds?

A. I don't think there was as much as five pounds.

Q. Can you tell me who was surveyor general in 1869?

A. T. W. Spencer.

Q. Do you remember who was postmaster here?

A. No, sir.

Q. Was "The New Mexican" issued then as a daily or weekly?

A. I think it was a daily.

Q. Published in Spanish or English?

A. Both.

Q. You took the New Mexican daily while you were here?

A. Yes, sir.

Q. Is it not a fact that when you were in town you read it every day?

A. When not occupied in other business, I did.

Q. When did you hear first, after this occurred, that there was an indignation meeting?

A. I don't remember of hearing of any indignation meeting except a general talk around town.

Q. It was why the papers were sold?

A. After this it was talked—all-around hearsay.

Q. I notice you went to that merchant and got them back.

A. Governor Pile and I consulted, and he said probably the best thing to do was to get the papers back, as there was some talk about the papers being of some value.

Q. You cannot state but what there might have been amongst those two, three, four, five pounds of papers some valuable ones?

A. There might have been.

Q. And that suspicion induced you and the governor to get the papers back——

—. ——.

Q. Did you only sell one pile of these archives; any others?

A. I believe that was all I sold.

104 Q. Do you remember who the receiver of public moneys was here then in the land office?

A. Mr. Little was receiver about that time.

Q. Who was the United States depositary?

A. Mr. Little was.

Q. Where was his office situated?

A. In the palace.

Q. Who was the judge of the court here then?

A. I think Judge Benedict; I don't just remember at that time; it may have been a little after. (Later) Palen was judge here at that time.

Redirect examination by Mr. REYNOLDS, U. S. attorney:

Q. You never heard of the Cubero land-grant papers being amongst those?

A. No, sir.

Q. You never heard of any such grant as the Cubero?

A. No, sir; not at that time.

Q. You never heard any complaint or talk about the Cubero grant being around or anything about it before or since?

A. No, sir.

Recross-examination by Mr. FROST, plaintiffs' att'y:

Q. What do you know about land grants, anyhow—only general hearsay?

A. I do not——

Q. Do you know anything of your own knowledge about a grant?

A. I have been living here and I can say I know what a land grant is since I have lived here.

Q. I do not ask you how long you have lived here nor what you have learned living here, but what do you know about land grants, papers, archives, records—anything?

A. Something.

Q. In the very nature of things, you couldn't have known anything about the Cubero land grant?

A. Not at that time.

Q. For all you know, possibly title papers might have been amongst those five pounds of papers, might it not?

A. Yes, sir; it might have been.

Here defendant rested its case.

105 (DEFENDANT'S EXHIBIT A.)

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. MEX., *July* 21, 1886.

In the matter of the private land claim known as the grant to Antonio Sandoval for the Estancia tract. File No. 10. Reported No. 70.

This claim was filed in this office by Gervacio Nolan July 12, 1855. Afterwards, the date not being given, an amended petition was filed by persons claiming to be the widow and heirs of Nolan. After an investigation Surveyor General Proudfit, on January 4, 1873, recommended the confirmation of the claim by Congress, according to the boundaries asserted. Under instructions of the General Land Office I have re-examined the case, and submit the following report:

In proof of the claim the petitioners presented several Spanish documents, by one of which it is shown that on December 5, 1845, Antonio Sandoval presented his petition to the governor of this Territory, setting forth that the Mexican government was indebted to him in large sums on account of services rendered and money loaned, and requesting that he be granted a tract of land bounded as follows: "Towards the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and towards the south from the Salt lakes another league; on the east the little hills of the Pedernal, and on the west the water of the Mesteñas."

On the 7th of the same month the governor, in consideration of the services rendered and the sums due, granted to the petitioner the land solicited. On December 15 following possession was delivered to an agent of the petitioner by Jose Baca y Ortiz, a justice of the peace, the boundaries named being the same as above stated.

106 A certificate of the comptroller of the departmental treasury was filed, showing that large sums of money were due Sandoval from the Mexican government.

There is nothing to indicate that any of these papers ever constituted a portion of the archives of the Mexican nation. A comparison of the signature of the governor to the granting decree with other signatures of the same officer on documents in this office

establishes its genuineness, and that of the other signatures upon said papers was testified to by a witness who was present when the possession of the land was delivered. It was not shown that any record of this grant was ever made.

In passing upon the validity of grants made under the colonization law of Mexico, as was this one, the Supreme Court of the United States, in the case of Peralta *vs.* United States, 3 Wall., 434, said:

"The colonization regulations of 1828 constitute the 'laws and usages' by which the validity of a Mexican title is to be determined." Also, "The record was the grant, and without it the title was not divested. The governor was required to give a document to the party interested, which was evidence of title and enabled him to get possession, but this 'titulo' did not divest the title unless record was made in conformity with law."

In discussing the same subject the supreme court of California, in the case of Leese and Vallejo *v.* Clarke, 3 Cal., 17, held: "To these regulations this court can alone look, and by them every grant must be determined. If the officers of the Mexican government to whom was confided this trust exceeded their authority or neglected the solemnities and formalities of the law, this court is bound to take notice of it, and cannot shield those claiming under such titles from the necessary consequences of ignorance, carelessness, or ar-
107 bitrary assumptions of power. * * * But that these requisitions must be fully complied with this court has no doubt, without which *a* severance of the land from the public domain and a rigid adherence in all other respects the title did not pass to the grantees, but remained in the government of Mexico."

In the case of Peralta *v.* United States, cited above, it is also said: "Written documentary evidence, no matter how formal and complete or how well supported by the testimony of witnesses, will not suffice, if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed."

It seems quite clear, according to the authorities cited, that no legal title vested in the grantee in this case. Its validity is very questionable in another point of view. On referring to private land claim reported from this office as No. 35, it will be seen that on July 20, 1859, the surveyor general of this Territory recommended to Congress the confirmation of a claim made by Antonio Sandoval to a tract of land in Socorro county, in this Territory. This claim was confirmed by Congress June 21, 1860 (21 Stats., p. 71). It has been surveyed, and was patented March 21, 1877, for 60,117.39 acres. There can be little question that the grantee in this case is the Antonio Sandoval to whom a grant is alleged to have been made in the case now under consideration. The name of Antonio Sandoval appears to the petition to the governor in each, and the signatures were evidently written by the same person. Each petition recites that the petitioner is a resident of the town of Albuquerque,
108 both being dated at that place, one bearing date November 24, 1845, and the other December 5, 1845. The decree of the governor in each case says that the grant is made in consideration

of the personal services and financial assistance rendered the Mexican government by the grantee. The grant in No. 35 was made on November 28, 1845, and in No. 70 on December 7, 1845.

Under the restrictions of section 12 of the law of 1824 the maximum quantity grantable to one person was eleven square leagues. This provision could not be evaded by making separate grants. This question was decided by the United States Supreme Court in the case of The United States *vs.* Hartnell's Executor, 22 How., 286. The facts show the making of two grants, one in 1841 and the other in 1844. Both combined exceeded eleven square leagues. In deciding the case the court said:

"The narrow question is, Had the governor of California power, in 1844, to grant gratuitously, for the purpose of tillage, inhabitancy, and pasturage, more than eleven leagues of land to any one person? Section 12 of the law of 1824 provides that it shall not be permitted to unite in one hand as property more than one league of irrigable land, four leagues of farming land not irrigable, and six for stock-raising.

"Both titles of Hartnell were brought before the departmental assembly. That body held the law to be that the governor could not 'unite in the same hand' more than eleven, although it might be in different tracts, and so reported to him. * * *

"We have no doubt that the departmental assembly, the board of commissioners, and the district court construed the law of 1824 (section 12) correctly, and ordered the decree below to be affirmed in all its parts."

109 If the Antonio Sandoval named as grantee in each of the cases Nos. 35 and 70 was the same person, the governor possessed no power to make the second grant. This view is fully supported by the action of Congress and the officers of the Land Department in the settlement of claims reported from this office as Nos. 39 and 48, and known as the Nolan grants. In these cases two grants were made to the same person, one in 1843 and the other in 1845. By combining them, the quantity granted exceeded the limit fixed by the law of 1824. Congress, by an act of July 1, 1870 (16 Stats., 646), confirmed claim No. 48 to the extent of eleven square leagues, and provided that when such quantity was surveyed and patented it should be taken and held as full satisfaction of all further claims and demands of the confirmees against the United States. Two Commissioners of the General Land Office have since decided that under the above-cited act claim No. 39 was satisfied and had no legal standing, and the present Secretary of the Interior, in January last, affirmed their decision (12 Copp's Land Owner, 282), and the land covered by claim No. 39 was declared to be a part of the public domain.

Of the equity of the grantee, where the law and regulations were not complied with, it has been said:

"The title, at best, can only be considered as inchoate. It passed with the map of the property of Mexico to the United States, who now hold it subject to the trust imposed by the treaty of cession and the equities of the grantees. The execution of this trust, however,

is a political power, to which the judiciary is not competent until made so by legislation" (Leese and Vallejo *v.* Clarke, 3 Cal., 17).

110 If any equity arises in favor of the grantee in this case it must rest upon occupation and improvement of the land in good faith or the payment therefor in something of value. Section 11 of the regulations of 1828 is as follows:

"The governor shall designate to the new colonist a proportionate time within which he shall be bound to cultivate or occupy the land on the terms and with the number of persons or families which he may have capitulated for, it being understood that if he does not comply the grant of the land shall remain void. Nevertheless the governor may revalidate it in proportion to the part which the party may have fulfilled." (See Hall's Mexican Law, p. 151.)

No evidence was produced in this case that Sandoval ever occupied or cultivated the land in any manner, or that he was ever in possession or exercised any acts of ownership over it subsequent to the delivery of it to his agent.

It may be contended that, as the land was conveyed for a valuable consideration, the performance of these requirements was not necessary; but the regulations quoted make such performance necessary and indispensable. Besides, it was not shown that Sandoval released or entered satisfaction of any claim he held against the Government, and, for aught that appears, his demands were otherwise paid.

It may also be claimed that the governor possessed the power, outside of the colonization law and regulations referred to, to make concessions of the public domain of Mexico. The authorities cited show that this claim is untenable. This is conclusively shown by the Supreme Court of the United States in the cases of The United States *v.* Vallejo, 1 Black, 541; United States *v.* Vigil, 13

111 Wall., 449, and by the supreme court of California in the case of Leese and Vallejo *v.* Clarke, 3 Cal., 17.

Should it be held that either a legal or equitable title vested in the grantee the question as to quantity remains to be determined. That the Mexican government could not grant more than eleven square leagues to one person has already been shown. For further authorities on this point I refer to 1 White's Recop., p. 602, and United States *v.* Larkin *et al.*, 18 How., 567.

A survey of the claim under consideration was made under the supervision of this office in the years 1877, 1878, which embraces 415,036.56 acres, and the land is reserved from entry or sale. In November, 1883, a protest against the survey signed by several persons was filed in this office. It sets forth that the western boundary line, as fixed by the survey, is seven to eight miles too far west; that the southern line was fixed many miles south of the boundary call mentioned in the petition of Sandoval to the governor, or the act of possession, and that the eastern boundary was established at the summit of the hills or mountains, instead of at the base. It is further stated that the deputy executing the survey made no effort to ascertain the true location of the boundary calls, and the affidavits returned by him, taken ostensibly for that purpose, seem to

bear out the assertion. They are two in number, and each affiant was a resident of Las Vegas, some sixty or seventy miles from the land. The only statement made by one as to the boundary calls is his answer to the question as to the location of the Pedernal, which is: "It is there—that is, the hill of the Pedernal, and there
112 are the small hills of Pedernal." He made no statement as to being acquainted with the land or its boundaries.

The other witness stated that he knew nothing of the land, and his answer as to the Pedernal was in substance the same as the answer above copied, and this comprises his testimony on the subject, and the two constitute the entire evidence taken by the deputy surveyor, so far as is shown by the files of this office.

On February 8, 1886, the persons filing the protest above referred to requested that said protest be withdrawn, stating that they had become satisfied that the information upon which it was based was incorrect. What induced this action I am not prepared to say, but it is worth while to notice that one of the present claimants of the land was instrumental in having the withdrawal filed. It is only necessary to add that the survey made contains more than four times the quantity the governor was authorized to grant to one person, as shown by the law and decisions I have quoted.

Believing that no title, either legal or equitable, is shown in this case, the question of survey is not material, and I only refer to it as showing the spirit and character of the proceedings and as a very striking illustrative fact.

I recommend the rejection of the claim by Congress.

Triplicate copies of this report are transmitted, as required.

GEORGE W. JULIAN,
Surveyor General.

113 (DEFENDANT'S EXHIBIT B.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 17, 1886.

SIR: I have the honor to transmit herewith, for submission to Congress, the sup-lementary report, in duplicate, of the surveyor general for New Mexico on the private land claim designated as the Estancia tract, No. 70.

By a reference to the record in the case, consisting of copies of translations from alleged originals, it appears that under date of December 5, 1845, Antonio Sandoval petitioned the governor to grant to him, "in possession *integram*, the Salt Lakes tract, assigning as boundaries toward the north one league from the Berrendo spring, the said Berrendo spring being within the possession, and toward the south from the Salt lakes another league; on the east the little hills of the Pedernal, and on the west the water of the Mester*ias*," to be taken in compensation for services to the Mexican government. Under date of December 7, 1845, Manuel Armijo, the then governor, made the grant in the following terms:

The government being convinced of the valuable services Don

Antonio Sandoval has rendered and is now rendering the country, as well during the time to which he refers as also during the six years he served administering the prefecture of the second district, with a salary of $1,500, of which not even a half real has been paid to him, the sum due him amounting to $9,000, and the statements in his petition being true, I do, in exercise of the powers in me vested by the laws, and also in consideration of all the premises, and as a just title acquired, make to him the grant for the land he solicits, with all the dimensions and pasture lands he asks, that he may enjoy the same in the name of the supreme government of the Mexican nation, and under my concession free and exempt from all tax and tribute.

The next paper is a certificate, dated December 6, 1845, of Jose Serafin Ramirez, comptroller of the departmental treasury, wherein it is shown that Sandoval had served the Mexican nation for
114 many years, and that he had loaned numerous sums of money to the treasury of the nation, and there were large sums of money due him.

Under date of December 15, 1845, Jose Baca y Ortiz, justice of the peace of the Real del Oro, in obedience to the decree of the most excellent governor, proceeded to the land conceded and placed Juan Antonio Aragon, the representative of Antonio Sandoval, in possession of the tract described in the petition.

The next paper in the case is a translated copy of an original testamentary donation, by which it appears that under date of July 8, 1848, Sandoval conveyed all his title to said land to his nephew, Gervacio Nolan.

These are all the papers filed by the present claimants.

At the date of said alleged grant the regulations adopted November 21, 1828, under the colonization act of August 18, 1824, were the only laws in force relating to the disposal of the public domain — provide:

(1.) The governors of the Territories are authorized (in compliance with the law of the General Congress of the 18th of August, 1824, and under the conditions hereinafter specified), to grant vacant lands in their respective Territories to contractors (empresarios), families, or private persons, whether Mexicans or foreigners, who may ask for them for the purpose of cultivating or inhabiting them.

(2.) Every person soliciting lands, whether he be an empresario, head of a family, or private person, shall address to the governor of the respective Territory a petition setting forth his name, country, profession, the number, description, religion, and other circumstances of the families or persons with whom he wishes to colonize, describing, as distinctly as possible, by means of a map, the land asked for.

115 (3.) The governor shall proceed immediately to obtain the necessary information whether the petition embraces the conditions required by the said law of 13th August, both as regards the land and the candidate, in order that the petitioner may at once be

attended to, or, if it be preferred, the respective municipal authority, whether there be any objection to making the grant.

(4.) This being done, the governor will accede or not to said petition in exact conformity to the laws on the subject, and especially the before-mentioned one of the 18th August, 1824.

(5.) The grants made to families or private persons shall not be held to be definitely valid without the previous consent of the territorial deputation; to which end the respective documents (expedientes) shall be forwarded to it.

(6.) When the governor shall not obtain the approbation of the territorial deputation he shall report to the supreme government, forwarding the necessary documents for its decision.

(7.) The grants made to empresarios for them to colonize with many families shall not be held to be definitely valid until the approval of the supreme government be obtained; to which the necessary documents must be forwarded, along with the report of the territorial deputation.

(8.) The definitive grant asked for being made, a document signed by the governor shall be given to serve as a title to the party interested, wherein it must be stated that said grant is made in exact conformity with the provisions of the laws in virtue whereof possession shall be given.

116 (9.) The necessary record shall be kept, in a book prepared for the purpose, of all the petitions presented and grants made, with the maps of the lands granted, and a circumstantial report shall be forwarded quarterly to the supreme government, etc.

From the foregoing it will be seen that to make a grant under the Mexican government definitively valid it was necessary first to address a petition to the governor, who was to make enquiries relative to the fitness of the applicant and to make his decree, which decree or concession was then submitted to the departmental assembly, and if there approved the governor then issued the definitive grant, with direction to the proper officer to place the party in possession. After having been placed in possession he was then to have his muniments of title recorded in a book kept for this purpose.

The paper filed by the present claimant is the original decree or concession. There is no evidence that the same was ever approved by the departmental assembly nor that a final title ever issued. There is nothing to show that the same had been recorded nor is there anything to show that the present claimants have in any manner occupied, cultivated, and inhabited the land claimed.

In the petition of Sandoval to the governor he states that the land asked for will be taken as compensation for past services.

In the governor's concession for the land he states that Sandoval had served the government for years, and that the sum of $9,000 was still due, and then proceeds to concede the land asked for.

The Supreme Court of the United States in the case of The
117 United States *v.* Vigil (13 Wallace, p. 451) says:

It has been repeatedly decided by the court that the only laws in force in the Territories of New Mexico for the disposition of the public lands, with the exception of those relating to missions

and towns, are the act of the Mexican Congress of 1824 and the regulations of 1828. * * * This policy recognized the obligation resting on the Government to hold the public land as a public trust, to be administered for the benefit of those who would settle upon them or cultivate them. They could not be sold for money nor granted away in consideration of past public services nor on condition for making public improvements of use to the traveling community or of general benefit to the State. The power to cede them depended entirely on the uses to which they were to be put, and these, as we have seen, were cultivation or settlement. The legal right to dispose of them for other objects was withdrawn from the local authorities and rested alone with the supreme government.

By reference to the records of this office I find that under date of November 24, 1845, Antonio Sandoval, a resident of the town of Albuquerque, petitioned the governor for a tract of land known as the Bosque del Apache. Under date of November 28, 1845, the governor, in consideration of the meritorious services of the petitioner, granted the land applied for. This claim was confirmed as No. 35 by the 3d section of the act of Congress of June 21, 1860 (Stats. 12, p. 71), and was patented March 21, 1877. This patent covers a tract of 60,117.39 acres, 11,292.91 acres in excess of eleven square leagues, which was the maximum quantity the governors of Mexico were authorized to grant to one individual.

Antonio Sandoval, the alleged grantee in this case, — undoubtedly the same party to whom the grant of the Bosque del Apache was made, as they were both residents of Albuquerque, and the concession and grant are in both cases made for services rendered and money loaned the Mexican government.

In the case of The United States *v.* The Widow, Heirs, and Executors of William E. P. Hartnell, deceased, the Supreme Court say:

118 "The narrow question is: Had the governor of California power, in 1844, to grant gratuitously for the purposes of tillage, inhabitancy, and pasturage more than eleven leagues of land to any one person? Section 12 of the law of 1824 provides that it shall not be permitted to unite in one hand as property more than one league of irrigable land, four leagues of farming land not irrigable, and six for stock-raising.

Both titles of Hartnell were brought before the departmental assembly. That body held the law to be that the governor could not "unite in the same hand" more than eleven leagues, although it might be in different tracts, and so reported to him.

There was never any record of this preliminary concession or of the juridical possession. Relative to the necessity of the record under the Mexican government, the Supreme Court has held:

The colonization regulations of 1828 constitute the laws and usages by which the Mexican title is to be determined. * * * The record was the grant, and without it the title was not divested. The governor was required to give a document to the party interested, which was evidence of title and enabled him to get possession; but

this titulo did not divest the title unless record was made in conformity with law.

The non-production of this record evidence of the title under the circumstances is calculated to excite well-grounded suspicions as to its validity, and throws upon the claimant the burden of producing the fullest proof of which the party is capable of the genuineness of the grant. We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title, but it should be produced or its absence accounted for to the satisfaction of the court (United States *v.* Teschmacher *et al.*, 22 Howard, p. 405).

In the case of Peralta *v.* The United States (3 Wallace, p. 440), in considering the proof necessary to establish a grant made by Mexico, held that—

Written documentary evidence, no matter how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands and there is nothing in the public records of the country to show that such evidence existed. See also 1 Black, p. 227, and cases cited.

It may be proper to state that there *has* been confirmed and patented to Gervacio Nolan eleven square leagues of land. This was in satisfaction of two claims presented for confirmation, one as original grantee and the other to himself and associates.

119 The act of confirmation (July 1, 1870, Stats. 16, p. 646) provides that when said lands are so confirmed, surveyed, and patented they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.

Parties claiming to be the heirs of Gervacio Nolan are the present claimants in this case. The confirmation of 1870 to Nolan being in full satisfaction of all further claims or demands against the United States, the present claim by his heirs should fail.

A preliminary survey of this grant has been made at the instance of the grant claimants, purporting to conform to the boundaries mentioned in the petition, and covers an area of 415,036.56 acres.

In this case none of the proceedings necessary to make a preliminary concession definitively valid were ever had. The governor made no report to the territorial deputation. There was never any approval of the preliminary concession by the deputation. No definitive title ever issued. There was no record for the reason that the same had never reached the dignity of a grant. The governor could not make a grant of land in consideration of past public services.

Antonio Sandoval having procured a confirmation by and patent from the United States for 60,117.39 acres, equal to 13.54 leagues, or 2.54 leagues more than the Mexican government was authorized to grant under the laws, the second grant was illegal and of no effect.

The claim of Nolan depending upon a testamentary donation by Sandoval, he succeeded to only such rights as Sandoval may have had; and as Sandoval had no legal title, there was nothing which Nolan could take.

No evidence is produced showing that Sandoval or Nolan had

ever inhabited, cultivated, or occupied this claim; hence no
120 equities are shown.

For the reasons above recited, I concur in the recommendation of Surveyor General Julian that the claim be rejected by Congress, thereby restoring to the public domain over 415,000 acres of land which are now reserved to satisfy this illegal and inequitable claim.

I am, sir, very respectfully, your obedient servant,

WM. A. J. SPARKS,
Commissioner.

Hon. L. Q. C. Lamar, Secretary of the Interior.

121 (DEFENDANT'S EXHIBIT C.)

NOTA.—Ba en el presente papel comun por no haber en todo este Territorio, del sello correspondiente.

Secretario de la Diputacion Territorial del Nuevo Mejico.

Certifico yo el infrascripto Secretario de la Exma. Diputacion Territorial Nuevo Mejico que en Libro de Actas de los acuerdos de S. E. A. las 34 fojas se halla una en que consta haberse presentado (sesion del dia 19 de Nove. de 1824) una solicitud de Da Ursula Chavez a nombre y por la auciencia de su legitimo esposo D. Antonio Sandoval, cuyo tenor a la Letra es como sigue. Exmo. Sor: Da Ursula Chavez vecina y residente en la Plaza de los Padillas en la jurisdiccion de la Ysleta; a V. E. hace presente: Que mi Esposo D. Antonio Sandoval en el corriente año por medio de una respresentacion solicito ante el Señor Gefe Policico un terreno en la Agua Negra con el objecto de que permanesca en dicho sitio la Hacienda que hace años tiene alli; mas habiendo llegado el tiempo de que indispensablemente debia verificar su marcha mi sitado esposo para la ciudad de Durango, y viendo que nada se hebia resuelto sobre su solicitud me previno ocurriese a V. E. como lo verifico. A nombre de mi sitado esposo como dejo referido: suplico a V. E. se digne mandar siempre que para ello, no haya dificultad se done a mi esposo D. Antonio Sandoval en el paraje nombrado de la Agua Negra, una propiedad que conste de una legua por cada rumbo; pues las perdidas que mi sitado esposo esta sufriendo solo dimanan de haber caresido hasta ahora de una propiedad en que suficientemente, puedan encontrarse reunidos los principales intereses de que consta su corto giro; a mas de que jamas molestari a V. E. mi sitado esposo con semejante peticion si no estubiere convencido de queel paraje que solicita no reconoce dueño legitimo ni mucho menos resulta por esta donacion el menor por esta donacion el
pues este terreno ignoro reconosco alguna Alcaldia de la Prova
menor per juicio a la Prova. y por lo mismo suplico a V. E. que
esta posesion me sea dada por el individuo que V. E. tenga
122 a bien. San Andres de los Padillas, Noviembre 5 de 1824.
Por mandado de Da Ursula Chavez, Francisco Sarracino.

Diputacion Territorial del Nueva Mejico, 19 de Noviembre de

1824. Pase esta instancia al Señor Gefe, Superior Politico para que a continuacion de ella informe si conviene o no accederse a la solicitud a que se refiere, o si hay impedimento justo y legal para negarsele el terreno que solicita, Bartolome Baca, Presidente: Antonio Ortiz, Pedro Jose Perea, Pedro Bautista Pino, Matias Ortiz, Juan Bautista Vigil, Secretario. Exmo. Señor: El ciudadano Bartolome Baca Gefe Superior Politico de Nuevo Mejico y Presidente de su Diputacion Territorial, A. V. E. hace presente: Que a virtud de la solicitud presentada por Da Ursula Chavez a nombre y representacion de su Esposo legitimo la sesion de este dia paso en el mismo a manifestar en favor del asunto lo siguiente: Nada. Señor Exmo., puede interesar mas, a la felicidad de los habitantes de este suelo, como la propagacion de la industria progresiba de la cria de ganados de hasta lanar y caballada, siendo sin comparacion mas anexa cuando esta por los particulares y a costa de esponer sus intereses con ellos mismos, ban cubriendo las fronteras que sirven de obstaculo a la propria industria; mas allanado un paso que hasta la fecha aun al mismo Gobierno la ha sido insuperable, resulta un veneficio incalculable a este Territorio con la incomparable providencia de dar propidad de terrenos para criaderos de ganados mayores y menores en las fronteras de mas consideracion para el resguardo de las poblaciones que conserban un terror panico sus moradores por las hostilidades que con tanta repeticion de sucesos lastimosos sufren sin poder contar por parte del gobierno con la remora de su defensa. Los habitantes de este Territorio aun no conocen todavia las ventajas que les resultan de que los proprietarios de rango, en el estado de intereses mo-
123 vientes, sean los que con ellos mismos manifiesten a las tribus de Yndios barbaros que nos rodean que el poderoso auge de nuestras armas se estiende a ocupar los terrenos que no ha mucho tiempo consideraban como un patrimonio suyo, haciendolo respectar solamente el temor, a sus deviles y despreciables armas: asegurando a V. E. sin el menor riesgo de equivocarme, que las generaciones venideras vendeciran esta tan laudable providencia dada por V. E. en el tiempo de la desolacion y de la miseria en que la tribu Nabajo y otros barbaros creian haber dejado a este precioso suelo. No molestaria a V. E. haciendo estas reflecciones si no las considerara tan oportunas como necesarias para quitar las trabas que por ignorancia o por malicia se quieren oponer a una providencia tan veneficiosa como necesaria para el fomento de los intereses de estos habitantes, sopretesto de alegar perjuicios imaginarios contra su mismo veneficio e intereses tanto mas recomendables, cuanto que hace muy poco tiempo, que los intereses de este Territorio estaban reconsentrados en uno que otro individuo de no muy aventajadas proporciones; no sucede a la presente E. S. tal desventaja pues por mas que se decante la pobresa de nuestros conciudadanos, tiene este suelo numero considerable de hombres de proporciones de industria y de caudal, que, con la proteccion de veneficas providencias seran el ornamento, y el foco de la riqueza de este continente. Tengo manifestado a V. E. en el informe que estendi (provocado por V. E.) en la solicitud del basto terreno que en el Rio de las Gallinas pidio,

y se le concedio, al ciudadano Juan Estevan Pino, las miras del Supremo Gobierno en la repoblacion de este suelo, y por lo mismo omito su repeticion; contrayendome unicamente a recomendar a V. E. el buen despacho de la solicitud que Da. Ursula Chavez hace a nombre de su esposo D. Antonio Sandoval quien solamte. pide en el punto conosido por el Agua Negra, una legua cua drada,
124 para tener en ella los bienes de campo que posee: Sube de punto el merito de mi recomendacion, cuanto mas distante se halla dicho terreno de las poblaciones, y del que tengo manifestado a V. E. combiene reservarse en el centro de los Rios Pecos y del Xorte; asi por la cortedad de sus aguas como por lo immediato a todos los pueblos de este Territorio que comunalmte. lo necesitan muy amenudo, y para el tiempo de la intemperie del frio e imbaciones de los Indios barbaros y salvajes que le acometen temporalmente. Por todas estas razones, e inumerables que omito por no molestar a V. E. es muy conveniente que con la mayor diferencia vea V. E. la solicitud de D. Antonio Sandoval, y sin perdida de momento se le conceda el terreno que solisita, el que hallandose tan distante de todas las jurisdicciones de este suelo no se puede ordenar a ninguna de sus autoridades ponga a dicho Sandoval en pocesion del terreno que ha solicitado, y por lo mismo puede V. E. comisionar al efecto a Don Francisco Sarracino para que de orden de V. E. asi lo verifique; o como a V. E. mejor parecerle pueda. Santa Fé, del Nuevo Mejico, 19 de Noviembre de 1824. Bartolome Baca. Sesion del dia 19 de Noviembre de 1824, libro 2°, fojas 34, parafo 4°. Se presento una solicitud pidiendo en ella Da. Ursula Chavez por auciencia de su esposo Don Antonio Sandoval se le conseda en el punto conosido por el Agua Negra, una legua de terreno en cuadro, para que teniendo en ella la propiedad correspondiente, pueda introducir sus intereses o bienes de campo como lo solicita. Se resolvio despues de haberse oido con agrado el informe que a continuacion estendio el Senor Gefe Politico, se conceda a D. Antonio Sandoval la legua de terreno que solicita en el paraje de la Agua Negra y sin perjuicio de tercero; y que por la Secretaria de esta Diputacion se le de a el interesado el testimonio correspondiente que le servira de titulo, y con el mismo, y de orden
125 de esta junta pasara Don Francisco Sarracino a dicho punto del Agua Negra y arreglado a lo que ha acordado S. E. pondra en pocesion al referido D. Antonio Sendoval. Bartolome Baca, presidente; Antonio Ortiz; Pedro Jose Perea; Matias Ortiz; Juan Bautista Vigil, secretario.

Concuerda fiel y legalmente con los originales de que ha sido sacado el presente testimonio que de orden de S. E. doy a Don Antonio Sandoval vecino de la Plaza de San Andres de los Padillas Jurisdicion del Ayuntamiento de San Agustin de la Ysleta. Es copia. Santa Fé, del Nuevo Mejico, 21 de Noviembre de 1824.

JUAN BAUTISTA VIGIL, *Srio.*

Derechos del testimonio de estos documentos 20 pesos.

JURISDICCION DE LA YSLETA EN PAJARITO.
Decembre 1°, *de* 1824.

Cumpliendo con el antesedente mandato por S. E. la diputacion territorial de N°. Mexico, Franco. Sarracino por este auto ordeno a Dn. Antonio Sandoval se presente para el dia 5 del corriente mes en el ojo de la Agua Negra, cerca del Rio de Pecos para ponerlo en la plena pocesion que se le ha concedido. Hagasele saber asi al dicho Dn. Anto. Sandoval para su cumplimiento.

F°. SARRACINO,
Comisionado.

CAMPO SOBRE EL OJO DE LA AGUA CERCA DEL RIO DE PECOS, *Decembre* 5, *de* 1834.

Franco. Sarracino, Juez Comisionado por S. E. la Diputacion de este Territorio a virtud del decreto arriba escrito, estando
126 sobre la cabeza del ojo del Agua Negra y no habiendo incontrado impedimento alguno en perjuicio de tercero que pudiera conbarazar la dicha pocesion, pongo en plena y pacifica pocesion de dicho sitio a Dn. Anto. Sandoval como suyo propio, señalandole y dandole toda Señoria de una legua por cado rumbo de 5,000 varas castellanas tomando una linea recta desde el dicho ojo al oriente de 5,000 varas, otra igual al Poniente de la misma manera, otra linea recta al Norte de 5,000 varas y otra igual al Sur de 5,000 varas que formaran el cuadro correspondiente a la pocesion que seran los linderos fijos del dicho sitio de la Agua Negra que en este dia entrego a D. Anto. Sandoval par a que use de el como suyo propio sirviendole estos documentos de justo titulo y para toda constancia lo firme, siendo testigos, Mateo Lopez y Roque Chavez, que por no saber escribir no firmaron.

F°. SARRACINO.
Comisionado.

127 (DEFENDANT'S EXHIBIT C.)

Translation.

(NOTE.—The following is written on common paper, there being none of the proper seal in all this Territory:)

Office of the secretary of the territorial deputation of New Mexico.

I, the undersigned, secretary of the most excellent territorial deputation of New Mexico, do hereby certify that at page 34 of the book of proceedings of Its Excellency there appears a petition presented by Dona Ursula Chaves (at the session of the 19th day of November, 1824), in the name and during the absence of her legitimate husband, Don Antonio Sandoval, the literal tenor of which is as follows:

MOST EXCELLENT SIR: Dona Ursula Chaves, native and resident of the town of Los Padillas, in the jurisdiction of Ysleta, represent, to Your Excellency. That my husband D. Antonio Sandoval, during

the present years, solicited from the honorable political chief, by petition a tract of land at the "Agua Negra," for the purpose of keeping permanently at that place the stock he has had there for many years; but the time having arrived for my husband to make and unavoidable journey to the city of Durango, and seeing that nothing has been done with his petition, it occurred to me to apply to Your Excellency, as I now do, in the name of my said husband, as above mentioned, praying Your Excellency to be pleased to order (providing there is no obstacle in so doing) that a tract containing one league in each direction be donated to my husband at the place called "Agua Negra," the losses my husband is now suffering are occasioned only by not having a sufficient piece of property in which to keep together the principal stock which composes his business. Further, my husband would not trouble Your Excellency with such a petition were he not satisfied that the land he solicits is not claimed by any legal owner, and no injury whatever will result to this province, as I am not aware that this land is claimed to be
128 under any justice's jurisdiction in the province, and therefore I pray Your Excellency that the possession thereof be given to me by the individual Your Excellency may be pleased to designate.

SAN ANDRES DE LOS PADILLAS.

November 5th, 1824.

By direction of—
DONA URSULA CHAVES.
FRANCISCO SARRACINO.

TERRITORIAL DEPUTATION OF NEW MEXICO,
November 19th, 1824.

Let this petition be transmitted to the superior political chief, in order he may report, immediately following, if it is convenient or not to grant the petition referred to, or if there is any just or legal impediment to deny him the land that he petitions for.

BARTOLOME BACA, *President.*
ANTONIO ORTIZ.
PEDRO JOSE PEREA.
PEDRO BAUTISTA PINO.
MATIAS ORTIZ.
JUAN BAUTISTA VIGIL, *Secretary.*

MOST EXCELLENT SIR: Citizen Bartolome Baca, superior political chief of New Mexico and president of its territorial deputation, represents to Your Excellency that in view of the petition presented by Dona Ursula Chavez, in the name and representing her legitimate husband, Don Antonio Sandoval, and in compliance with the directions of Your Excellency made in session of today, I proceed to report in favor of the matter as follows: Nothing, most excellent sir, can be more interesting to the inhabitants of this land than the propagation of the progres-ive industry of the raising of horned and woolen cattle and horses, being without comparison more important, when it is

considered that individuals at the risk of the loss of their property are covering the frontiers which are an obstacle to that branch, but the overcoming of one obstacle, which up to the present time the government has not been able to overcome an incalculable benefit results to the Territory with the incomparable measure of granting lands for the raising of stock and sheep on the most favorable frontiers, for
129 the protection of the settlements, the inhabitants of which are in constant terror on account of the hostilities which are so often repeated, attended with so many painful circumstances, without being able to receive any protection from the government. The inhabitants of this Territory are not yet aware of the benefits resulting from the wealthy proprietors with their stock showing the tribes of barbarous Indians who surround us that the powerful renown of our arms is extended to the occupation of the lands which not long since were claimed by them as their inheritance, the fear of their weak and despicable arms alone making them respected. Assuring Your Excellency, without the least fear of being mistaken that future generations will bless this laudable step taken by Your Excellency at the time when the Navajo and other wild tribes considered that they had laid waste this precious land—I would not trouble Your Excellency with these remarks, did I not consider them appropriate and necessary to remove the prejudices which through ignorance or malice are being brought to bear against such beneficent and necessary measures for the welfare of the interests of these inhabitants under the pretext *or* arguing imaginary obstacles against their own interest and benefit, much more to be recommended, when it is considered that not long since the wealth of this Territory was confined to a few individuals, without extensive means; such is not the case at present, Your Excellency, as although the poverty of our fellow-citizens is always set forth, this territory contains a considerable number of persons with capital, industry, and means, who, receiving the protection of beneficent measures, would be the ornament and the source of the wealth of this continent. I have already stated to Your Excellency in the report made (by your direction) in reference to the petition of Don Juan Esteban Pino, who asked for and re-
130 ceived the large tract of land on the Gallinas river, and with the views of the supreme government, in reference to the resettlement of this country, which I will not here repeat. Restricting myself only to recommend to Your Excellency the favorable consideration of the petition made by Dona Ursula Chaves in the name of her husband Don Antonio Sandoval, who only asks for one league square at the place known by the name of Agua Negra, for the purpose of keeping his herds there. My recommendation is apparent when it is considered that this land is very far from the settlements and which as already stated to Your Excellency, it is proper to reserve in the centre of the Pecos and Del Norte rivers, on account of the scarcity of water, as well as its immediate vicinity to all the settlements in this Territory, who commonly require it very often on account of the inclemency of the weather and the occasional attacks of the savage and wild Indians.

For all these reasons and many others with which I will not

trouble Your Excellency, it is very proper that you consider the petition of Don Antonio Sandoval with the greatest deference and that the land asked for by him be granted without any loss of time, which being situated so far from any jurisdiction in this Territory, none of its authorities can be directed to place said Sandoval in possession of the land he has petitioned for, for which reason Your Excellency can commission Don Francisco Sarracino to place him in possession under your direction, or as Your Excellency may deem most proper.

Santa Fé, New Mexico, November 19th, 1824.

BARTOLOME BACA.

Session of the 19th of December, 1824, Book 2d, page 34, paragraph 4.

A petition was presented by Dona Ursula Chaves, in the absence of her husband, Don Antonio Sandoval, asking for a grant of one league square of land at the place called Agua Negra, in
131 order that having the proper title thereto he may take his property and stock there, as he states. It was resolved after having heard with pleasure the report of the political chief, attached thereto, that the grant of one league of land petitioned for by Don Antonio Sandoval, at Agua Negra, be granted to him, without injury to any third party, and that through the office of the secretary of this deputation the proper copy be given to the party interested which shall answer as a title thereto, and with the same and by direction of this body Don Francisco Sarracino will proceed to the point of Agua Negra, and according to the directions of Its Excellency will place the aforesaid Don Antonio Sandoval in possession.

BARTOLOME BACA, *President.*
ANTONIO ORTIZ.
PEDRO JOSE PEREA.
MATIAS ORTIZ.
JUAN BAUTISTA VIGIL, *Secretary.*

The above agrees faithfully and legally with the originals from whence the present copy has been taken, which is given to Don Antonio Sandoval, resident of the town of San Andres de los Padillas, jurisdiction of the corporation of San Agustin de la Ysleta, by order of Its Excellency. Copy.

Santa Fé, New Mexico, November 21st, 1824.

(Signed) JUAN BAUTISTA VIGIL, *Secretary.*

Fees for copying this document, 20 dollars.

JURISDICTION OF YSLETA, PAJARITO, *December* 1*st*, 1824.

In compliance with the foregoing mandate of its excellency, the territorial deputation of New Mexico, I, Francisco Sarracino, do hereby order Don Antonio Sandoval to present himself on the 5th

day of the present month at the spring of the Agua Negra,
132 near the Pecos river, to place him in the full possession granted to him. Let the above be made known to the said Don Antonio Sandoval for his compliance therewith.

(Signed) FCO SARRACINO,
Commissioner.

CAMP ON THE AGUA SPRINGS NEAR THE PECOS RIVER, *December* 5, 1824.

Francisco Sarracino, justice commissioned by its excellency, the deputation of this Territory, by virtue of the above-written decree, being at the head of the Agua Negra spring and having found no impediment to the injury of any third party for granting said possession, I placed Don Antonio Sandoval in full and quiet possession of said land, pointing out and giving him full control over one league of 5,000 Castilian varas in each direction, drawing a direct line from the spring 5,000 varas toward the east, one of the same length toward the west, another direct line of 5,000 varas toward the north, and another of 5,000 varas toward the south, which form the proper square to the possession which are to be the fixed boundaries of the tract of the Agua Negra, which I this day deliver to Don Antonio Sandoval, to — used by him as his own property, this document being a just title to him, and in testimony thereof I signed, Mateo Lopes and Roque Chaves, being witnesses, whom not knowing how to write, did not sign.

(Signed) FRCO SARRACINO,
Commissioner.

133 *Claim No.* 41.

ANTONIO SANDOVAL.

This case was filed on the 21st of October, 1856, and set for trial on the 3d day of December, 1856.

On the 5th day of November, 1824, Ursula Chaves, the wife of Antonio Sandoval, in his name petitioned the political chief for a grant to a tract of land containing one league square at the place called Agua Negra.

The territorial deputation referred the petition to the political chief for his report, which was done on the 19th November of the same year, recommending the grant to be made, which was accordingly done by the territorial deputation on the same day.

The document acted upon by this office is a certified copy of the petition and grant made by the secretary of the territorial deputation. The possession given by Francisco Sarracino by order of the territorial deputation is original.

The signatures are proven to be genuine; and, as the grant is made in conformity to law and was in the occupancy of the grantee

at the time, it is therefore confirmed and transmitted for the action of Congress in the premises.

WM. PELHAM,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, September 17, 1857.

134 (DEFENDANT'S EXHIBIT D.)

UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

To William Pelham, surveyor general of New Mexico:

Antonio Sandoval, a citizen of the United States, resident in the county of Bernalillo, Territory of New Mexico, respectfully represents to you that he is the claimant and legal owner in fee of a certain tract of land lying and being situate in the county of Socorro, Territory of New Mexico, and known as the Bosque de los Apaches, and bounded on the north by the rancho known as the Rancho de las Bacas, on the south by the grant of Valverde, and on the east and west extending two leagues on each side of the River Del Norte, all of which points and boundaries are well-known landmarks or easily to be ascertained in the said county of Socorro, and the said Antonio Sandoval, the present claimant, claims a perfect title to said lands by virtue of a perfect and unconditional grant made to him on the 28th day of November, A. D. 1845, by Manuel Armijo, the then acting and actual governor of New Mexico, which said grant was made as expressed upon the grant for meritorious services rendered the Republic of Mexico and in conformity to the laws, usages, and customs of the Republic of Mexico in force at the time said grant was made. For which power and authority see the decrees of Mexico of June 4th and September 18, 1823, pages 123 and 180 of the 2nd vol. of Galvan's Decrees. See also the Colonization Laws of the Republic of Mexico. See also decisions of the Supreme Court of the United States in Fremont's case, 19th Howard's Reports, page 542.

135 The said Antonio Sandoval, the present claimant, further states that he cannot show the quantity of land claimed by him except as the same are set forth in the grant, nor can he furnish a plat of survey, as no survey has ever been executed. Claimant further states that he knows of no adverse claims to said lands, and that by virtue of said grant he was legally put in possession of said lands and has retained the same down to the present time. Claimant files this his claim before you under the 8th section of the act of Congress approved 22nd of July, 1854, entitled An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska to grant donations to actual settlers thereon, and for other purposes, and respectfully asks confirmation by you of this his said claim.

M. ASHURST,
Att'y for Claimant.

136 (DEFENDANT'S EXHIBIT E.)

Sello Tercero. [SEAL.] Un Peso.

Años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Exmo. Sor. Gobor.:

El C. Anto. Sandoval, vecino de la villa de Albuquerque ante la recta justificacion de V. E. como mas en derecho haya lugar y al mio convenir pueda salvo las protestas utiles y necesarias comparesco y digo: Sor. que a virtud de haberme incontrado en los margenes del Rio del Norte en el punto que llaman el Bosque del Apache, un terreno baldio, yerto, y despoblado y sin perjuicio de tercero, y siendo como lo es en mi concepto el referido terreno muy ameno, abundante de aguas, pastos y demas, y para el aumento de la agricultura paso a impetrar la venebolencia de V. E. para que en nombre de ntros. soberanos poderes de la nacion Mejicana, se sirva el hacerme la gracia de concederme por posesion dicho terreno para lavorias y poner crias de ganados menores y mallores, sirviendose igualmente concederme los limites siguientes; que son desde el Rancho de las Bacas que le llaman para abajo una y otra banda del Rio hasta Balverde, esto es por las margenes del Rio, y por ejidos del lado del oeste y Sudeste dos leguas por cada rumbo si lo tubiere a bien V. E. segun las leyes. Por todo lo cual: A. V. E. rendidamente pido y suplico sea bien servido acceder a esta mi solicitud en lo que recivire merced y gracia que impetro, Juro no proceder demalicia protesto la buena fé, constas y lo necesario, &c.

ANTONIO SANDOVAL.

Albuquerque, Noviembre 24, de 1845.

SANTA FÉ, *Noviembre* 28, *de* 1845.

137 A consequencia de los servicios analogos y meritorios que Don Antonio Sandoval ha hecho a la patria, tanto con su persona como con sus bienes, en prestamos forzosos y demas sutencilios he tenido a bien consederle el terreno que solicita en nombre del Supremo Gobierno de la nacion Mejicana, y haciendo merito este gobierno de lo benefico que dicho Sandoval ha sido a la patria, y segun las facultades se me confieren por las leyes, le hago esta concepcion, *integrum*, con los limites y ejidos que pide libre de todo y franco de pencion, por lo cual pase el postulante al Jues de Paz dl Socorro para que ponga en posesion al suplicante y haga la escritura correspondiente.

MANUEL ARMIJO.

En este puesto y demarcacion de Sn. Miguel del Socorro perteneciente al 3er. Disto. del Departamento del Nuevo Mejico a los siete del mes de Marzo del presente año de mil ochocientos cuarenta y seis: Yo Don Vicente Pino Juez de Paz de dicha demarcacion autuando con testigos instrumentales, y de asistencia, con quienes autuo

por receptoria a falta de Escribano publico y nacional que no lo hay segun derecho en justo obedecimiento al decreto de E. S. Gobernador fecha 28 de Noviembre ultimoppase al terreno que se solicita en la anterior instancia que ase Don. Anto. Sandoval vecino de la Villa de Albuquerque y habiendolo inspecionado con bastante esaminucion y delicadeza lo incuentro baldio, yerto y despoblado y sin perjuicio de tercero, como lo relaciona la referida instancia a lo que haviendo dado estos pasos, le hice al presentante saber, en presencia de los testigos la peticion que hacia, y que respecto a lo aresgado y frontericio del terreno habia de mantener la gente que lo havitara bien proveido de armas de fuego, o flechas, para
defensa de sus personas e intereses, como igualmente que se
138 guarden todas las reglas y estitutos que los demas colonos
guardan, a lo cual estando entendido de todo lo que se le advierte lo tome por la mano, lo pasie por dichas tierras, tiro piedras, arranco sacates, y dio voces de alegria diciendo viva el Soberano Congreso de la nacion Mejicana, tomando posesion quieta y pacificamente y por lo mismo yo el referido Juez de Paz dije, en claras y inteligibles voces, que en nombre del Soberano Congreso de la nacion y sin perjuicio de sin nacional haver, ni el de tercero le hacia la concepcion del mencionado terreno, libre de todo y franco de pencion, señalandole por linderos que son por el Norte una mojonera de piedra y lodo que se puso cuando se dono el Socorro quedando contiguas una y otra posesion siendo la linea debisoria dicha mojonera, y por el sur siguiendo el curso del rio para abajo hasta toparse con los limites de Balverde, quedando tambien contigua; por el oriente las dos leguas que se citan en la instancia referida, y por el Poniente otras dos leguas segun queda citado, y por lo tanto, cumpliendo con lo prevenido por el E. S. Govor. y que incuentro el terreno sin perjuicio de tercero, como queda referido, pongo al citado Sandoval en legitima posesion para que con libre, franca y general administracion pueda usar de ella, como propiedad legitima, y para su constancia y que el presente documento de dona tenga la fuerza y validacion que en derecho se requiere, e interpuse e interpongo la autoridad que por derecho me es conferida, firmandolo con los testigos referidos en dicho dia, mes y año de que doy fee.

VICENTE PINO.

Asistencia:
JOSE ANTO. BACA Y PINO.
Asistencia:
PEDRO BEJIL.
Ynsl.:
JOSE ANASTACIO TORRES.
Ynsl.:
JOSE DIONICIO SILVA.
Ynsl.:
JUAN BERTA.

Derechos del jusgado 26 lo juro.

139 Este titulo es registrado en el libro letra "B" folios 18 y 19 en mi oficina. Lo que certifico, firmo y sello para constancia, Santa Fé, Diciembre 30, de 1848.

DONACIANO VIGIL,
Registrador de Titulos de Tierras del Territorio de Nuevo Mejico.

140 (DEFENDANT'S EXHIBIT E.)

Translation.

Seal third. [SEAL.] One dollar.

Years one thousand eight hundred and forty-four and eight hundred and forty-five.

Citizen Antonio Sandoval, resident of the town of Albuquerque, appealing to the upright justice of Your Excellency, in the most approved manner prescribed by law and convenient to me, saving such protests as may be useful and necessary app-ar- and state-:

That by virtue of having found on the banks of the Del Norte river at the point called Bosque del Apache, a tract of uncultivated, waste and unoccupied land and without injury to any third party, and as I believe said land to be extremely fertile, with an abundance of water and other requisites necessary for the advancement of agriculture, I proceed to impetrate the benevolence of Your Excellency that in the name of our sovereign powers of the Mexican nation, that you be pleased to grant me possession of said land for cultivation and the raising of cattle and sheep, being pleased to grant me also the following boundaries which are, from what is called "El Rancho de Las Vacas" (the cow herd) down the river, on both sides to Valverde, that is to say, following the course of the river, and for pasture on the west and southeast two leagues in each direction, if Your Excellency under the laws sees proper to do so. In view of all which

I humbly pray and request Your Excellency to be well pleased to comply with my request by which I will receive that grace and favor which I sue for. I swear that I am not acting through malice. I protest good faith, costs and whatever may be necessary, etc.

Albuquerque, November 24, 1845.

(Signed) ANTONIO SANDOVAL.

141 SANTA FÉ, *November 28th*, 1845.

In consequence of the analogous and meritorious services rendered to the country by Don Antonio Sandoval, not only personally but also with his property, in forced loans and in other ways, I have seen proper to grant him the lands he solicits in the name of the supreme government of the Mexican nation, and as this government takes into consideration the benefit the said Sandoval has been to the country, and by virtue of the power conferred upon me by law,

I invest him with this grant *integrum* (unconditionally), with the boundaries and commons for pasture he asks for, free from all, and exempt from tax, therefore the petitioner will present himself to the justice of the peace of Socorro, who will place the petitioner in possession and execute the proper deeds.

(Signed) MANL. ARMIJO.

At this place and demarcation of San Miguel del Socorro, belonging to the third district of the department of New Mexico, on the seventh day of the month of March of the present year, one thousand eight hundred and forty-six, I Don Vicente Pino, justice of the peace of said demarcation, acting with instrumental and attending witnesses, with whom I act in the well-known absence of public or national notaries, there being none according to law, in strict compliance with the decree of his excellency, the governor, bearing date the 28th November last, I proceeded to the land referred to in the foregoing petition made by Don Antonio Sandoval, resident of the town of Albuquerque, and having inspected it with a great amount of care and delicacy, I find it vacant, waste and unoccupied and without injury to third parties, as stated in the foregoing petition. Having taken these steps I proceeded to make
142 known to the petitioner, in the presence of witnesses, the request he made and in regard to the land being in a dangerous locality and on the frontier, he should well provide the people he would keep there with a sufficiency of firearms or bows and arrows in order to defend their persons and property and also that he should comply with all the rules and regulations provided for other colonists, having acknowledged that he was duly informed of the above conditions, I took him by the hand, and walked with him over said lands. He threw stones, pulled up grass and cried aloud with joy saying "Long live the sovereign Congress of the Mexican nation," taking possession quietly and peaceably and therefore, I, the aforesaid justice of the peace stated in a clear and audible voice that in the name of the sovereign Congress of the nation and without injury to its national revenue, nor to third parties, the aforesaid grant was made to him free from everything and exempt from taxation, specifying as boundaries, on the north, a monument of stone and mud, which was erected when Socorro was granted, the two possessions being adjoining, said monument being the dividing line, and on the south, following down the course of the river to where it is intersected by the boundaries of Valverde, being also adjoining; on the east, the two leagues mentioned in the foregoing petition, and on the west, two leagues more as therein mentioned, and therefore, in compliance with the instructions of his excellency, the governor, and finding the land will not injure any third party, as aforementioned, I placed the said Sandoval in legitimate possession, fully empowered to use it with free, unincumbered and general administration, as his legitimate property, and in order that this granting deed may have the force and validity required by law I did
143 and do interpose the authority conferred upon me by law,

signing with my aforesaid witnesses on the said day, month and year, to which I certify.

(Signed) VICENTE PINO.

Attending:
(Signed) JOSE ANTONIO BACA Y PINO.

Attending:
(Signed) PEDRO VIGIL.

Instrumental:
(Signed) JOSE ANASTACIO TORRES.

Instrumental:
(Signed) JOSE DIONICIO SILVA.

Instrumental:
(Signed) JUAN BEYTA.

Justice's fees 26 dollars.
I swear. [RUBRIC.]

144 ANTONIO SANDOVAL
vs.
THE UNITED STATES.

This case was set for trial on the 13th day of July, 1859.

On the 24th November, 1845, Antonio Sandoval petitioned Manuel Armijo, civil and military governor of New Mexico, for a tract of land situated in what is now the county of Socorro, in the Territory of New Mexico. On the 28th November of the same year the governor, in consideration of the valuable services rendered to the Government by Sandoval, not only in his person, but also with his fortune granted the land unconditionally with the boundaries set forth in the petition, and directed the justice of the peace of Socorro to place him in possession of the land, which was done on the 7th day of March, 1846.

The land is proven in evidence to have been occupied and cultivated by Sandoval from the date of the grant to the present day.

The papers acted upon in the case are the originals filed by the claimants.

The grant having been made by the proper authority of the country for services rendered to the Government, and being absolute and unconditional, it is approved to the said Antonio Sandoval and ordered to be transmitted to Congress for its action in the premises.

WM. PELHAM,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, July 20th, 1859.

145 (DEFENDANT'S EXHIBIT F.)

U. S. Stats. at Large, vol. 12, p. 71.

"CHAPTER CLXVII.

"An act to confirm certain private land claims in the Territory of New Mexico.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *."

* * * * * * *

"SEC. 3. And be it further enacted, That private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor general in his report and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior, in his letter dated the third day of February, eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby, confirmed, with the exception of the claim numbered twenty-six, in the name of Juan Vigil, which claim number twenty-six is not confirmed.

"SEC. 4. And be it further enacted, That the foregoing confirmation shall only be construed as a quitclaim or relinquishment on the part of the United States and shall not affect the adverse rights of any other person or persons whomsoever."

Approved June 21, 1860.

146 (DEFENDANT'S EXHIBIT G.)

UNITED STATES OF AMERICA, }
Territory of New Mexico. }

To Alexander P. Wilbar, surveyor general of the Territory of New Mexico:

Your petitioners, Fernando Nolan, Eugenio Nolan, Antonio Nolan, Leonora Nolan, Francisco Nolan, all children of Gervacio Nolan, dec'd, and Eneria Delgado and Manuelita Delgado, children of Eneria Nolan, deceased, daughter of said Gervacio Nolan, deceased, and Maria Dolores Lalando, widow of the said Gervacio Nolan, dec'd, citizens of the United States and residents of the Territory of New Mexico, represent to you that, as heirs-at-law of Gervacio Nolan, they are the claimants and legal owners in fee of a certain tract of land lying and being situate in the county of Mora, in the Territory of New Mexico, and partly in the county of Arapahoe, Territory of Kansas, and known as the Cuerno Verde grant, and bounded and described as follows: Beginning at a point one and — half leagues below the mouth of the River St. Charles on the River Arkansas at a monument No. 1 on the south bank of said river, thence following the said south bank of said River Arkansas upwards to a point five leagues above the junction of the St. Charles with the Arkansas river, where is placed the second monument

thence running half way up the brow of the mountain, where is placed the third monument; thence following the same brow of the mountain to a point opposite the first monument, where is placed the 4th monument; and the said claimants, heirs of Gervacio Nolan, claim a perfect title to said land by virtue of a grant made on the first day of December, A. D. 1843, by Governor Manuel Armijo, political chief of the province of New Mexico, to Gervacio
147 Nolan; which said grant was made, as aforesaid, by authority and in accordance with the laws and usages of the Republic of Mexico at that time and of the Spanish laws and regulations which were declared and recognized by the government of Mexico to be in force and effect at that time. See Collections of Decrees and Orders of the Cortez of Spain, published in Mexico by Mariano Galvan in 1829, page 56 and from page 91 to 101. The said heirs and legal representatives of the said Gervacio Nolan cannot show the quantity of land claimed, except as set forth in the documents of said grant, as within the above-described metes and bounds, nor can they furnish a plat or map of the same, as no survey has ever been made, but present the accompanying documents as full proof of title to the said land, and prays its confirmation.

JNO. S. WATTS,
Att'y for Claimants.

148 (DEFENDANT'S EXHIBIT H.)

Sello cuarto—Dos reales.

Años de mil ochocientos cuarenta y dos y mil ochocientos cuarenta y tres.

Exmo. Sr. Gobor:

Gervacio Nolan, frances naturaldo, y vecino del valle de Taos, ante V. E. respetuosamente hago presente, ql. deseando impulsar la agricultura ramo tan recomendado por nuestras leyes patrias, y encontrandose baldio y sin cultivo el Rito de D. Carlos desde su nacimiento hasta su confluencia con el Xapeste terreno aproposito y ql. presta las comodidades necesarias para establecer una siembra capaz para proporcionar la mantencion do mi familia y un ameno campo para la cria de ganados mayor y lanar, deseando ocuparme de ambos ramos, y como por otra parte me considero protejido por las leyes para acometer esta empresa, no he vacilado de ocurrir a V. E. como el medio seguro para conseguir la posesion del referido rio a fin de ql. si no hay un tercero qi. me lo embarace y estubiere como en efecto esta libre y baldio se me conceda en posesion, protestando empeñar toda mi posibilidad en adelantar su cultivo y no desampararlo hasta haver establecido y radicado mi permanencia en el, ofreciendo que dentro del termino ql. me conceden las leyes establecere la colonia y pondre en ella los ganados que me fueren posible para proporcionarme la subsistencia. Por todo lo cual.

A. V. E. pido y suplico ql. haviendome por presentado se sirva acceder a mi solicitud si asi lo considere conforme y arreglado a la justicia.

GERVAISIO NOLAIN.

Santa Fé, Noviembre 14 de 1843.

(Defendant's Exhibit I.)

Santa Fé, *Dic're* 1 *de* 1843.

Al Sr. Prefecto para ql. de sus ordenes al juez de la primera demarcacion de Taos, para ql. de la posesion a ql. se refiere el
149 petente y la documente conforme a las leyes de la materia, asegurandose antes que en efecto esta baldia y ql no se hace perjuicio a tercero, pues si hubiere algun embaraso ql. estorbe para obrar informara el ql. sea.

ARMIJO.

DONACIANO VIGIL, *Sn. Into.*

(Defendant's Exhibit J.)

Rio Arriba, *D'bre* 8 *de* 1843.

El juez de paz de la primera demarcacion de Taos teniendo a la vista el superior decreto de fha. 1° de D'bre del E. S. Gobernador Dn. Man'l Armijo le dara su puntual y devido cumplimiento, teniendo presente cuantos puntos en dicho superior decreto se hallan, sin dar lugar a perjuicio alguno.

ARCHULETA.

(Defendant's Exhibit K.)

Sr. Juez de Paz de la 1ª Demarcacion, D. Cornelio Vigil:

El que subscribe, cuidadano Mejicano y residente en este departamento, ante V. en la mejor forma que haya lugar en derecho, paresco y digo: Que habiendosenos donado por el govierno del departamento el terreno valdio que demarca la adjunta instancia como se ve por el superior decreto sentado al margen, y careciendo del titulo de posesion que me asegure nuestra legal propiedad y ninguno pueda turbarnos en ella, suplico de V. se sirva hacerme por presentado y desde luego ampliarme esta para los usos de nuestro derecho. Por tanto A. V. pido se sirva acceder a mi solicitud pr. ser justicia que impetro, juro no ser de malicia y lo necesario, &c.

GERVACIO NOLLIN.

D'bre 9 de 1843.

150 Diciembre 10 de 1843.

Por presentado y admitido en cuanto haya lugar en dro. pasese por mi el presente juez con los de asistencia e instrumentales al lugar que citan los documentos adjuntos, y dese a los petentes la posesion que solicitan pa. qe. por si y por sus herederos y sucesores sea havido en dro. El ciudadano Cornelio Vigil, juez de paz de la 1ª. demarcacion de Taos asi proveyo mando y firmo con los de assa. doy fee.

CORNELIO VIGIL.

Assa.:
CARLOS BEAUBIEN.

Assa.:
LUIS LEE.

(DEFENDANT'S EXHIBIT L.)

En el pueblo de Taos a los quince dias del mes de D'bre mil ochocientos cuarenta y tres yo el C. Cornelio Vigil, Juez de Paz de esta demarcacion en virtud de lo mandado en el decreto ql. antecede, pase al terreno ql. refiere D. Gervacio Nollin en el antecedente escrito, y estando en el con los de mi asistencia e instrumentales ql. al fin se nombraran se procedio a señalar las mohoneras de los limites conforme se describe el terreno en la preinserta peticion y corresponde al mapa qe. rubrico ; y empesando por la banda del sur del rio del Napeste a una legua y media vajo de la confluencia del rio de Don Carlos conaquel, se puso una mohonera, donde siguiendo el mismo rio del Napeste para arriba hasta cinco leguas arriva de la confluencia del mismo rio Don Carlos y se puso la 2ª. mohonera, continuando de hay para la cierra hasta media falda se puso la 3ª mohonera, donde siguiendo la misma falda de la cierra de norte a sur hasta llegar al frente de la primera mohonera se puso la cuarta y ultima mohonera ; y registrado lo tome de la mano,
lo pasee e hice tirar tierra, arrancar yerbas y otras demos-
151 traciones de propiedad, con lo ql. se concluyo el acto quedando determinados los linderos sin qe. hubiese aparecido reclamo alguno de perjuicio de tercero, por qe. yo el referido juez a nombre de la soverania de la nacion (q. Dg.) le di al mencionado G. Nollin la posesion personal y perfecta qe. solicita para que le sirva de titulo a el, sus hijos y sucesores, por lo cual les amparo y defiendo y mando que de ella no sean despojados sin ser primero oidos y por fuero y dro. vencidos—en fe de lo cual lo firme con los de mi asistencia y los instrumentales ql. lo fueron los cc. Jose Gabriel Vigil, Juan Ortega, y Ceran Sn. Vrain presentes y vecinos de esta demarcacion. Doy fee.

CORNELIO VIGIL.

Instrumental:
JUAN ORTEGA.

Instrumental:
JOSE GABRIEL VIGIL.

Instrumental:
CERAN ST. VRAIN.

Assa.:
CARLOS BEAUBIEN.

Assa.:
LUIS LEE.

Derechos 25 pesos.

Se registro este documento desde el folio 13 buelta al 14, lo que certifico. Santa Fe, Eno. 27 de 1847.

DONACIANO VIGIL.

152 (DEFENDANT'S EXHIBIT H.)

Translation.

Fourth seal. Two rials.

Years one thousand eight hundred and forty-two and one thousand eight hundred and forty-three.

Most excellent governor:

Gervacio Nolan, a naturalized Frenchman and resident of the valley of Taos, respectfully represents to Your Excellency that, being desirous of advancing agriculture, a branch so much commended by the laws of our country, and the valley (rito) of the Don Carlos from its headwaters to its confluence with the Arkansas being vacant and uncultivated—land suitable for the purpose—and which furnishes the necessary accommodations to establish a farm capable of furnishing the maintenance of my family and a fine range for the raising of large stock and sheep, being desirous of occupying myself in both branches, and as on the other hand I consider myself protected by the laws to undertake this enterprise, I have not hesitated in coming before Your Excellency as a sure means of obtaining possession of said river, in order that if there is no third person who might embarrass me, and it being, as in fact it is, unincumbered and uncultivated, the possession may be conceded to me, pledging myself to do all in my power to advance its cultivation, and not to abandon it until I have established my settlement and permanence thereon, offering that within time the laws allow me I will establish the colony and put in it the live stock I may find possible, for my subsistence.

In consideration of all which I ask and pray that, having presented myself, Your Excellency be pleased to grant my petition, should you consider it in conformity with justice.

Santa Fé, November 14, 1843.

GERVACIO NOLAN.

153 (DEFENDANT'S EXHIBIT I.)

Translation.

SANTA FÉ, *Dec.* 1, 1843.

To the prefect:

That he may give his orders to the justice of the first demarcation of Taos, that he give the possession to which the applicant refers and execute the title papers according to the laws on the subject, first satisfying himself that the land is in fact vacant, and that no damage be done to a third party, but if any impediment should hinder him from granting it he will give information of what it may be.

ARMIJO.

DONACIANO VIGIL,
Secretary pro Tem.

(DEFENDANT'S EXHIBIT J.)

Translation.

RIO ARRIBA, *Dec.* 8, 1843.

The justice of the peace of the first demarcation of Taos, having in view the superior decree of His Excellency, Manuel Armijo, dated Dec. 1, will give it his punctual and due compliance, keeping in view the points said superior decree contains, giving no ground for damage.

ARCHULETA.

(DEFENDANT'S EXHIBIT K.)

Translation.

Cornelio Vigil, justice of the peace of the 1st demarcation:

The subscriber, a Mexican citizen and resident of this department, appears before you, in the form that may be most legally correct, and states, that the governor of the department having donated us the vacant land, as marked out on the annexed paper, as will appear by the superior decree placed on the margin, and wanting the title of possession which may sure us our lawful property, so that none may disturb us therein, I pray you to consider me before you, and then to extend me the possession for the purposes of
154 our claim. Therefore,

I ask that you be pleased to accede to my petition, it being justice which I impetrate. I affirm that it is not dissimulation, and all that is necessary, etc.

Dec. 9, 1843.

GERVACIO NOLAN.

DECEMBER 10, 1843.

Being presented and admitted as far as consistent with law, I, the present justice, with my assisting and instrumental witnesses, will proceed to the place which the accompanying documents refer to, and give the possession to the petitioners which they solicit, in order that they and their heirs and successors may hold it in law.

The citizen Cornelio Vigil, justice of the peace of the first demarcation of Taos, so provided, ordered and signed, with the assisting witnesses. I certify.

CORNELIO VIGIL.

Assisting:
CARLOS BEAUBIEN.

Assisting:
LUIS LEE.

(DEFENDANT'S EXHIBIT L.)

Translation.

In the town of Taos, on the fifteenth day of the month of December, one thousand eight hundred and forty-three, I, the citizen Cornelio Vigil, a justice of the peace of this demarcation, by virtue of the order in the foregoing decree, proceeded to the land which Gervacio Nolan refers to in the foregoing document, and being upon it with those assisting me, to be mentioned at the end hereof, proceeded to show the landmarks of the boundaries according to the land described in the foregoing petition, and which corresponds with the map which I
155 sign with my rubric. And commencing on the south bank of the Arkansas river a league and a half below the confluence of the Don Carlos river with the foremer river was placed the first landmark; thence following up the same Arkansas river five leagues above the confluence of the Don Carlos river was placed the second landmark; thence running half way up the brow of the mountain was placed the third landmark; and thence following from north to south the same brow of the mountain to a point opposite the first landmark, there was placed the fourth and last landmark. And this being recorded I took him by the hand, led him about, and caused him to throw earth, pull up weeds and make other demonstrations of ownership, with which the act was concluded and the boundaries determined, without any third person appearing to claim damage, for which reason, I, the said justice of the peace, in the name of the sovereignty of the nation (which may God preserve) have given the said G. Nolan, the perfect and personal possession which he solicits, in order that it may serve as a title to him, his heirs and successors. Therefore I protect and defend them, and command that they be not dispossessed of the land without first being heard and by the statutes and equity defeated.

In testimony whereof I signed this with my assisting and instrumental witnesses, who were the citizens Jose Gabriel Vigil, Juan Ortega and Ceran St. Vrain, all present and residents of this demarcation.

I certify.

CORNELIO VIGIL.

Instrumental:
JUAN ORTEGA.

Instrumental:
JOSE GABRIEL VIGIL.

Instrumental:
CERAN ST. VRAIN.

Assisting:
CARLOS BEAUBIEN.

Assisting:
LUIS LEE.

Fees, 25 dollars. [RUBRIC.]

156 This document is recorded from page 13 to 14, to which I certify.

Santa Fé, January 27, 1847.

DONACIANO VIGIL.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *January* 31, 1861.

The foregoing is a correct translation from the original Spanish on file in this office.

DAV. J. MILLER, *Translator.*

NOTE.—In the date of Archuleta's order in the original paper the "2" in "28" is written over with a "0," leaving "8," and in the petition of Nolan the date has been altered to "9." The petition was at first addressed to "Miguel Sanchez," of the "3rd" demarcation, then to "Cornelio Vigil," of the "1st." In the body of Vigil's order of December 10th the name of "Miguel Sanchez" and "3rd" demarcation are struck out, "Cornelio Vigil" and "1st" substituted, and in the body of the act of possession "Miguel Sanchez" is struck out and "Cornelio Vigil" interlined.

—— ——, *Translator.*

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *January* 31, 1861.

David J. Miller, whose name appears signed to the above certificate, is, and was at the time of signing the same, translator in this office and all his acts as such are entitled to full faith and credit.

A. P. WILBAR.
Surveyor General.

157 (DEFENDANT'S EXHIBIT M.)

GERVACIO NOLAN
vs.
THE UNITED STATES. } Land Grant.

It appears in this case from the original papers filed as composing the claim that on the 14th day of November, 1843, Gervacio Nolan petitioned Governor Manuel Armijo for a certain tract of land; that on the 1st of December the governor directed the prefect of Rio Arriba, in which district the land was situated, to order the justice of the peace to place Nolan in possession, provided the land was vacant and the granting of it would interfere with no third party, and on the 8th day of the same month the prefect ordered the proper justice of the peace to give the decree of the governor punctual and due compliance, not forgetting the conditions contained in the same. On the 9th Nolan requested in writing the justice to place him formally in possession of the land, and on the 10th the justice recorded

on the title papers his intention to comply with the request, and accordingly, on the 15th, he proceeded, with his assisting and instrumental witnesses, to the tract of land and measured off the same, placing landmarks along the boundaries; all of which appears from the documents on file, the signatures to which are proven to be genuine.

The name of Gervacio Nolan appears in the papers in several different forms. This is accounted for by the establishment of the fact by the witness Delgado, who was his son-in-law, that Nolan could not read and write, and the consequent conclusion that other persons must have written and signed his name at his request, thus rendering easy the commission of error in the stating of his name properly. It is concluded that Gervacio Nolan was his true name.

It may also be observed that the grantee's personal pro-
158 nouns appear in his petition and in the granting documents, both in the singular and the plural form, thus indicating that there were more than Nolan applying for and receiving the land; but the fact is, so far as the papers show, there was but one petitioner and one grantee, and therefore the claim, so far only as it relates to Nolan, can be considered, as he is evidently the only individual contemplated and known in the grant as the grantee.

The questions and principles involved in this case are very similar to those in the case of Charles Beaubien, assignee, etc., *vs.* The United States, heretofore approved by this office and confirmed by Congress. The grant in that case was made by the same authority and about the same time as the one now under consideration, and, in regard to the power of making it residing in Governor Armijo, it was stated by the surveyor general in his decision of that case, and is now repeated as equally applicable in the present instance, that the supreme authorities of New Spain, afterwards the Republic of Mexico, exercised from time immemorial certain prerogatives and powers which, although not positively sanctioned by congressional enactments, were universally conceded by the Spanish and Mexican governments, and there being no evidence that these prerogatives and powers were revoked or repealed by the supreme authorities, it is to be presumed that the exercise of them was lawful. The subordinate authorities of the provinces implicitly obeyed these orders of the governors, which were continued for so long a period that they became the universal custom or written law of the land wherein they did not conflict with any subsequent congressional enactment. Such is the principle sanctioned by the Supreme Court of the United States, as expressed in the case of Fremont *vs.* The United
159 States, 17 Howard, 542, which decision now governs all cases of a similar nature.

It is therefore held by this office, after full investigation of the claim, and the grant being dependant on no conditions, but being an absolute one, and having been made by competent authority, and the boundaries of the grant being clearly defined and plainly marked, that it is a good and valid claim against the public domain of the United States, and it is accordingly recommended that Con-

gress confirm the title to the land embraced by the grant to the heirs of Gervacio Nolan, deceased.

A. P. WILBAR,
Surveyor General.

Surveyor general's office, Santa Fé, New Mexico, October 8, 1861.

160 (DEFENDANT'S EXHIBIT N.)

U. S. Stats. at Large, vol. 16, p. 646.

CHAP. CCII.

An act to confirm the title of the heirs of Gervacio Nolan, deceased, to certain lands in the Territory of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant to Gervacio Nolan, late of the valley of Taos, deceased, approved by the surveyor general of New Mexico, October eighth, eighteen hundred and sixty-one, and designated as number forty-eight in the transcript of private land claims in New Mexico, transmitted to Congress by the Secretary of the Interior on the twelfth day of May, eighteen hundred and sixty-two, but being now within the limits of the Territory of Colorado, is hereby confirmed to the extent of eleven square leagues.

SEC. 2. And be it further enacted, That the exterior lines of said claim of eleven square leagues as confirmed by this act, shall be adjusted according to the lines of the public surveys as near as practicable, but in a compact form, and the claims of all actual settlers falling within the limits of the located claim above referred to shall be adjusted to the extent which will embrace their several settlements upon their several claims being established either as pre-emption or homestead according to law, and for the aggregate of the *arears* (areas) so established under the pre-emption or homestead acts, the heirs of said Nolan, or their legal representatives, shall be entitled to locate a like quantity of public lands, not mineral, according to the lines of the public surveys, and not to exceed one hundred and sixty acres in one section: Provided, that such location shall be made within the bounds of the original grant by the order of Cornelio Vigil to Gervacio Nolan.

161 SEC. 3. And be it further enacted, That it shall be the duty of the Commissioner of the General Land Office to cause the lines of the public surveys to be run in the regions where proper location would place the said Nolan claim, and the expense of the same shall be paid out of any moneys in the Treasury not otherwise appropriated; but before the confirmation provided for in this act shall become legally effective the heirs of the said Gervacio Nolan, or their legal representatives, shall pay the cost of so much of said surveys as inures to their benefit respectively, and that all actual settlers whose claims may be adjusted as valid shall have a right to enter their improvements by a strict compliance with the pre-emption or homestead laws.

SEC. 4. And be it further enacted, That upon the adjustment of said claim of the heirs of Gervacio Nolan, according to the provisions of this act, it shall be the duty of the surveyor general of the district to furnish proper approved plats to said claimants, or their legal representatives, which shall be evidence of title, the same to be done according to such instructions as may be given by the Commissioner of the General Land Office: Provided, however, that when said lands are so confirmed, surveyed and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.

SEC. 5. And be it further enacted, That immediately upon running the lines provided for in the second section of this act the surveyor general of the district shall notify the said heirs of Gervacio Nolan, or their legal representatives of the fact of such survey being made, and said claimants shall, within three months after notice of such survey, select and locate their said claims according to
162 the provisions of this act, and shall, within said time, furnish the surveyor general with a description of such location, specifying the lines of the same, and the party failing to make such selection and location in such manner and within such time shall be deemed and held to have abandoned their claim, and their rights and equities under this act shall cease and terminate.

Approved July 1, 1870.

163 In the Court of Private Land Claims.

JOEL PARKER WHITNEY ET AL. *vs.* THE UNITED STATES ET ALS. } No. 152. Estancia Grant.

Opinion.

In this case the claimants seek the confirmation of a grant to Antonio Sandoval made by Manuel Armijo, as governor of New Mexico, on the 7th day of December, 1845.

The tract granted contains about four hundred thousand acres of land. In his petition for the grant Sandoval represented that for thirty years he had been rendering services to the country both by personal service and contribution of money and property, and had received no compensation therefor, and asked that the tract be granted to him in compensation for these services.

In the granting decree the governor recited that Sandoval had rendered valuable services to the country, as he had alleged, and that there was also due to him nine thousand dollars as salary as prefect, and thereupon declares: "And the statements in the petition being true, I do in exercise of the power in me vested by the laws, and also in consideration of all the premises, and as a just title acquired, make to him a grant for the land he solicits, with all the dimensions and pasture lands he asks that he may enjoy the same in the name of the supreme government of the Mexican nation and under my concession free and exempt from all tax and tribute."

The complainants seek confirmation of the entire tract granted on

the theory that the grant on its face and in legal effect was a complete and perfect title at the time it was made. To sustain this theory it is further claimed that the grant was not made under the colonization laws of Mexico of Aug. 18th, 1824, and regulations of 1828; that these laws had before that time been repealed; that the governor in making the grant must be presumed to have acted under direct authority from the supreme government of the
164 nation; that therefore the grant was not subject to the limitations contained in the above-mentioned colonization laws, and not subject to the eleven-league limitation contained in the act of Congress creating this court.

It is appropriate to examine the question whether the colonization law of 1824 and the regulations of 1828 were repealed.

By the provisions of that law the lands within the limits of the States were to be colonized through the medium of the Congresses of the several States, and by section 16 it was provided that "the Government, under the principles established in this law shall proceed to the colonization of the Territories of the Republic."

Prior to that law New Mexico had been established as a Territory of the Federation.

In 1835 the form of the Government was changed from that of a federative system to that of a central system.

By a law of October 3rd, 1835, it was provided that the governors of the several States should continue in office, but subject, in the exercise of their functions, to the supreme government of the nation; that the legislatures of the several States should discontinue their legislative functions, and that in their place there should be created departmental boards (Reynolds, 195).

By a law of Oct. 23rd, 1835, it was provided that the national territory should be divided into departments, and that the several departments should be governed by governors and departmental boards (Reynolds, 201).

By a law of December 29th, 1836, comprehensive provisions were made for the government and regulation of the internal affairs of the departments, prescribing the powers and duties of the governors and of the departmental councils.

By this law there was no provision whatever made in any way affecting the colonization of the public lands, and nothing indicating that either the governor or the departmental council should have any authority in the matter (Reynolds, 203).

165 By a law of December 30th, 1836, the territory of the nation was divided into departments and the limits of the several departments defined, and by it New Mexico was made a department (Reynolds, 209).

Prior to the law of December 30th, 1836, the internal affairs of the Territories had been governed in substantially the same manner as was provided for the government of the departments—that is to say, they were governed by a governor and council, whose functions were substantially similar to the functions of the governor and council of the departments. The laws providing for the government of the Territories contained no provisions in any way affecting the

colonization of the public land, and no provision indicating that the governor or council should have any authority in such matters.

The law of August 18th, 1824, vested the power to colonize the public land within the Territories in the executive department of the nation—that is to say, in the chief executive of the nation. This power, then, vested in the office of chief executive, and the subject of the power was not the Territories themselves as political organizations or as instruments of the national government, but the subject of the power was certain public lands of the nation. It was the land which was to be operated upon, and not the territorial organizations. The lands so to be operated on were designated and identified as the lands lying within the limits of the Territories of the Republic.

The change of New Mexico from a Territory to a department made no substantial change of the political relations of the Territory to the Mexican nation. It certainly made no change in the relation of the supreme government to the land within the Territory. The change from a federal to a central system made no necessary change in the relation of the chief executive to the public lands within the Territories; in other words, the change in the internal organization
166 did not render the power of the chief executive to colonize public lands inconsistent with or obnoxious to the new order of things. The change was not a curtailment of the powers of the executive government, but an enlargement of them. Now, to justify a holding that the change from the federal to the central system operated as a repeal by implication of the law vesting in the executive government the power to colonize the public lands lying within the Territories, it must be clear beyond reasonable question that the further exercise of that power as to those lands was obnoxious to the new order of things.

The power to colonize the public lands within the Territories being vested in the executive government, the means and agencies for carrying out that power were wholly of the choosing of the executive. This agency was by the chief executive of the nation committed to the governor of the Territory; not because he was a territorial governor, but because he was the chief officer of the political organization within which the lands were situated and deemed to be the appropriate officer to exercise such a function. The change from a Territory to a department did not change the office of governor. It did not change the functions of that office, and in fact it did not change the incumbent, for the time being, of that office. The change from a Territory to a department cannot therefore be said to have necessarily operated as a revocation of the agency and authority theretofore conferred by the chief executive upon the office of governor. It required the action of the chief executive himself to have that effect. He still remained clothed with the power to colonize.

By a law of April 4th, 1837, it was provided "the government in concurrence with the council shall proceed to make effective the colonization of the lands that are or should be the property of the Republic, by sales, leases or mortgages, and shall apply the proceeds

(which in the first case shall not be less than $1.25 per acre) to the payment of the national debt already contracted or which shall hereafter be contracted, always reserving enough to meet its obligations to the soldiers who took part in the war of independence, and for the remuneration and gifts Congress may grant to Indian tribes and nations, and those who assisted in the restoration of
167 Texas; and it shall not be compromised by the laws heretofore enacted on colonization, which enactments are all repealed in so far as they conflict with this law, but the prohibition of article 11 of the law of April 6th, 1830, shall remain in force" (Reynolds, 222).

It will be noticed that this law was promulgated some time after the change from a federal to a central system had been made completely effective. Now, the language of this law shows, if it shows anything, that up to that time, April 4th, 1837, the colonization laws of August 18th, 1824, for it could have referred to no other, had not been repealed. If the colonization law had been repealed by the change of system or in any other manner, why incorporate in the act of April 4th, 1837, the provision that in carrying it out the executive should not be limited by the colonization law, but that the latter was repealed in so far as it conflicted with the act in question?

It now becomes appropriate to enquire to what extent the colonization law of August 18, 1824, was repealed by the law of April 4th, 1837. Let us contrast the two laws.

By the colonization law lands were to be gratuitously granted in consideration of settlement, and could be granted on no other consideration. In it were prescribed certain limitations upon the power to grant even for settlement and cultivation. One of these limitations was that lands within twenty leagues of the boundaries of a foreign nation and lands within ten leagues of the seacoast could not be granted. Another limitation was that not more than eleven square leagues could be granted to one person.

By the law of April 4th, 1837, the power was conferred to dispose of the public lands by sales for cash, by mortgage or by lease. By this law there was no authority to grant land upon the consideration simply of settlement and cultivation.

It must be borne in mind that, so far, at least, as lands
168 within the Territories were concerned, the power to grant for colonization and the power to sell, mortgage, and lease were vested in the same official, the chief executive of the nation. The management of the whole matter was committed to the same hand.

By the law of 1837 any land within the national domain could be sold for cash, mortgaged, or leased. By the law of 1824 it was prohibited to grant lands within twenty miles of the boundary or within ten miles of the coast. In so far, then, as the law of 1824 might be construed to prohibit the sale, mortgage, or lease of land within twenty miles of the national boundary or within ten miles of the coast, it was repealed; but in so far as it prohibited the grant of land for colonization within those limits it was not repealed. In so far as the law of 1824 might be construed to prohibit the sale for

cash, mortgage, or lease of more than eleven squares leagues to one person, it was repealed; but in so far — it prohibited the granting of more than eleven leagues to one person, in consideration of settlement and cultivation, it was not repealed. In these two points only did the two laws conflict. The uniting in the same hand the power to sell for cash and the power to grant in limited quantities for colonization is not the uniting of antagonistic powers. The exercise of both could be carried on side by side, and when we consider the vastness of the Mexican domain at the time we cannot believe that they were considered to be antagonistic by the Mexican government.

By a law of April 12th, 1837 (Reynolds, 223), it was provided "for the greater security in payment of the capital and interest of the consolidated fund the government of Mexico specially mortgages in the name of the nation one hundred million acres of public lands in the departments of the Californias, Chihuahua, New Mexico, Sonora, and Texas as a special guarantee of said fund until the total extinction of the credits." Just what this provision means or what effect it had is not clear. That any one obtained any rights under it does not appear. The lands it could by any possibility affect were but a mere drop in a bucket as compared to the immense area mentioned. If this enactment operated to repeal the colonization law of 1824, then it operated to repeal the law of April
169 4th, 1837, authorizing the sale, mortgaging, and leasing of land, and the whole system of disposing of public land within the departments named, either by sale or grant, was destroyed. Certainly it did not and was never intended to have that effect.

By a decree of April 17th, 1837 (Reynolds, 224), provision was made for the creation of departmental treasuries and superior chiefs of the treasury. By section 73 it was provided, "All purchases and sales that are offered on account of the treasury and exceed five hundred dollars shall be made necessarily by the board of sales." Provision was also made for the composition of said board and regulating the conduct of its business.

This decree was issued by the chief executive of the government. As we have seen, the power to make sales of the public land was vested in him, as well as the power to grant public land for colonization.

The creation of the board of sales and committing to it the conduct of the sales for cash to be made of the public land was the method adopted by the chief executive for carrying into effect the power vested in him of making sales for cash hereinbefore referred to and was in no way repugnant to the continuance of the power vested by the chief executive in the governor of New Mexico to make grants of land for settlement and cultivation.

On September 15th, 1837 (Reynolds, 227), a convention was entered into between the Mexican government and the English holders of Mexican bonds. This convention incorporated the provision above referred to mortgaging the one hundred million acres of land as a security for the consolidated fund and made provision that the holders of certain bonds might exchange them for lands in Mexico

and might establish themselves and families upon such lands, and thereby acquire all the rights and advantages of colonists.

By a law of June 1st, 1839 (Reynolds, 232), it was provided, among other things, "The convention made in London with
170 the holders of Mexican bonds on September 15th, 1837, is approved;" also, "with respect to the colonies that may be established by virtue of the convention, the government shall see that the existing laws on colonization, or those that may be enacted hereafter, are observed in so far as they are not contrary to the convention itself." Inasmuch as no other laws on colonization were ever enacted by the Mexican government than the law of August 18th, 1824, this provision seems to be a clear recognition by the Mexican government of the fact that, notwithstanding the change to the central system and all the laws and decrees which had been promulgated and the hundred-million-acre mortgage and the London convention, the colonization law of August 18th, 1824, was still existing.

An examination of the "Bases of Tacubaya" of September 28th, 1841 (Reynolds, 234), and the "Bases Organica" of June 13th, 1843 (Reynolds, 243), fails to disclose an intention, express or implied, to set aside the colonization law of August 18th, 1824. From this survey it follows that the law of August 18th, 1824, was not repealed, either by express enactment or by necessary implication, and was not considered by the law-making power of Mexico to have been repealed.

By decisions of the Supreme Court of the United States in the cases of United States *vs.* Vallejo, 1st Black, 541; United States *vs.* Vigil, 13 Wall., 449, and the Cambuston case, 20 Howard, 59, it has been declared that the colonization law of August 18th, 1824, and the regulations of 1828 were in force in New Mexico up to the time the sovereignty of the country passed to the United States. When it is remembered that the political department, which had exclusive jurisdiction of the subject, had delegated to the courts the power to determine and discharge the obligations of the government under the treaty as to rights of property in lands, it is reasonable to say that these decisions are to be regarded as the solemn declaration of the government as to the policy it would pursue in determining and discharging its duties with reference to titles to land protected
171 by the treaty, and that the law of August 18th, 1824, and regulations of 1828 should be regarded as having continued in force, and that titles regularly derived under their provisions should be regarded as valid. If, under any circumstances, a judicial decision can be said to become a rule of property, then surely these decisions, made under such circumstances, ought to be so regarded. It must be true that, on the faith of the national determination and declaration so made, large amounts of money have been invested in lands, the titles to which have been derived from the law of August 18th, 1824. To change that policy now would not only be a positive wrong, but would seriously affect the national honor.

It follows that the grant in question in this case was made subject to the law of August 18th, 1824, and regulations of 1828, and is

affected by the limitations imposed by those laws—that is to say, it could not be valid for a greater quantity than eleven square leagues and could not become a perfect title until the grant had been approved by the departmental assembly.

On November 24th, 1845, Antonio Sandoval, the grantee of the tract under consideration in this case, petitioned Governor Armijo for a grant of a tract of land called the "Bosque del Apache," and on the 28th of November, 1845, the land was granted to him in compliance with his petition. Subsequently Sandoval prosecuted a claim before the Congress of the United States for the confirmation to him of the land so granted.

By an act of Congress approved June 21st, 1860, entitled "An act to confirm certain private land claims in New Mexico," the grant of the Bosque del Apache tract was confirmed to him, being surveyor general's reported number 35 mentioned in section 3 of said act. Subsequently the land so confirmed was surveyed and patented by the United States to Sandoval, containing over sixty thousand acres of land and more than eleven thousand acres in excess of eleven square leagues.

At the time of the taking effect of the treaty of Guada-
172 lupe Hidalgo, Sandoval was the owner of both tracts of land—that is to say, of the Bosque del Apache tract and of the tract which is the subject of consideration in this case.

By a decision of the Supreme Court of the United States in the case of U. S. *vs.* Hartnell's Executors, 22 Howard, 286, it was declared that the governor of a Territory could not by his grant unite in one person more than eleven square leagues of land, although it was done by two separate and distinct grants, and that if two grants were made to the same person covering in all more than that amount, and if one of the grants was confirmed, the other grant could only be confirmed for the residue of the eleven square leagues after deducting the amount covered by the first confirmation. By the two grants from Armijo, Sandoval only became entitled to eleven square leagues of land. As this was the limit of his right as against the government of Mexico, it became the limit of his right against the United States under the treaty of cession. Purchasers from Sandoval obtained no greater right against the United States than Sandoval had under the treaty. At the time of the treaty Sandoval was the owner of the tract in question here and subsequently conveyed it to Nolan, from whom it passed to the present claimants.

By the provisions of the act of Congress creating this court the jurisdiction of the court is limited to the confirmation of such claims as the United States was bound to recognize and confirm by virtue of the treaty of cession of the country from Mexico to the United States.

Sandoval's right against the United States under the treaty having been already confirmed to him by the United States to the full extent to which the United States was bound to recognize and confirm it, it follows that this court has no jurisdiction to confirm anything further to him or to his grantees.

Sandoval could not by his conveyance to Nolan create any right

in Nolan which he, Sandoval, did not possess himself. Nor
173 could he by such conveyance create in himself and Nolan jointly a right greater than he himself possessed singly. Nor could he by asking and securing to himself a confirmation of one tract create in Nolan a right to a confirmation of the other tract. Nor could Nolan by permitting Sandoval to secure a confirmation of one tract obtain any right to the confirmation of the other tract. Nor could Sandoval and Nolan, either jointly or singly, by and action or omission on the part of either or both secure any right to the confirmation of more than eleven square leagues out of the whole of the two tracts originally granted to Sandoval.

It follows that the claim must be rejected.

Chief Justice Reed and Associate Justice Fuller concur in this opinion.

(Signed) HENRY C. SLUSS,
Associate Justice.

174 JOEL PARKER WHITNEY ET AL. vs. UNITED STATES. } Estancia Grant. No. 152.

I concur in the conclusion reached by the court in this cause, but not for the reasons stated. This grant was made in 1845 for the alleged consideration of long public services of the grantee to the nation and the further fact that the nation was largely indebted to him on account of salary as a public officer.

It is stated by the governor that he makes the grant in the exercise of power vested in him by law, but no law is referred to by him. The governor had no power by virtue of his office to grant the public land of the nation for any purpose. It is insisted by counsel that the court must presume that power had been conferred on the governor by the chief executive to make the grant in question. In other words, that the governor acted as the agent of the chief executive, and therefore his acts must be construed to be the act of the chief executive. Several authorities were cited to sustain this construction. The public vacant lands belonged to the nation and could not be alienated by the chief executive unless he was authorized to do so by some act of Congress. I have been unable to find any law of Mexico in force at the date of this grant under which the chief executive could have made a valid grant for the consideration mentioned in the granting decree. The colonization law of April 4th, 1837 (Hall's Mex. Law, page 115), was in force at the date of this grant, under the provisions of which act all the vacant public land was to be colonized by sales, leases, and mortgages at not less than 125 cents per acre, and the proceeds were to be applied to the payment of the public debt, except the reservation contained in said act, which reservation did not apply to any lands in the department of New Mexico. All colonization laws in conflict with its provisions were repealed. If all the vacant lands belonging
to the nation were to be sold, leased, or mortgaged, I must
175 confess my inability to see what lands were left to be colonized by donations under the provisions of the act of August

18, 1824, and the regulations of November 21, 1828; but as I have discussed that question at some length in an opinion in the case of The United States *vs.* Pinkerton, I will file the same in this cause.

The colonization law of Aug. 18th, 1824, and executive regulations issued on Nov. 21st, 1828, to carry into effect the provisions of the law in the Territories was a scheme to gratuitously colonize all the vacant lands belonging to the Republic, with the restriction contained in articles 4 and 7. It was possible that under the provisions of the law and regulations for any foreigner or citizen to acquire in any State or Territory of the Republic eleven square leagues, or about 48,000 acres of land, without money and without price, and as an inducement to individuals to influence families to immigrate to Mexico, the government guaranteed "the contracts which empresarios might bring at their own expense," and as a further inducement colonists were exempt from taxation for a period of four years. On April 6, 1830, a law was passed, article II of which prohibited foreigners from colonizing on the borders of any foreign governments.

The decree of Nov. 25, 1833, repealed article II of the law of April 6, 1830, and authorized the government to expend a sum of money for the purpose of colonizing the Territories. On the 4th of February, 1834, a circular was issued based on the law of Nov. 25, 1833, offering to pay expenses of colonists who would remove to Coahuila and Texas (both being one State).

As early as Jan'y 26, 1831, a general department of the revenue was established. Vol. 2, p. 308, Legislacion Mexicana. A circular was issued by the treasury department in relation to the revenues on July 7th, 1831—Legislacion Mexicana, vol. 3, p. 341—and a general regulation was issued on July 20th, 1831. Vol. 3, p. 2963, Legislacion Mexicana. These laws and regulations materially changed the law of 1824. The junta de almoneda (board of sale) was
176 created with powers to sell certain lands, and necessary machinery to collect the revenue belonging to the Republic was provided for. Mexican Statutes, vol. 2, pp. 303 to 351.

The Republic, prior to 1835, had contracted a large debt and was unable even to meet the interest upon it. The people had become dissatisfied with their form of government. The policy of gratuitous colonization of the public domain seemed to have proved a failure. A central system of government was created. The several States and Territories of the Republic were abolished and departments created in their stead.

And on the 29th day of December, 1836, the constitution of the new government was adopted. Legislacion Mexicana, vol. 3, p. 230, No. 1836. The change of the form of the government did not liquidate the large debt which had been created by the Republic. This was to be provided for. So with the change of the form of government a change in the form of system of colonization of the public lands was inaugurated. On the 17th day of Jan'y, 1837, twelve days after the adoption of the constitution, an act was passed by Congress creating a national bank and creating a mortgage in

favor of said bank on all the vacant lands in the Territory for the purpose of raising money. Mexican Statutes, vol. 3, p. 363.

And to further provide for the payment of the national debt the following law was enacted:

April 4, 1837, Hall's Mexican Laws, p. 115: "The government, with the concurrence of the council, shall proceed to carry into effect the colonization of the lands that are or ought to be the property of the Republic, by means of sales, leases or mortgages, applying the proceeds thereof (which in the first instance shall not be less than 10 reals per acre) to the payment of the national debt already created or that may be hereafter created, always reserving a sufficient quantity for the fulfillment of what has been promised to soldiers who took part in the war of independ-
177 dence, and for the giving of rewards and making concessions which Congress may decree in favor of Indian tribes or nations and those persons who assisted in the restoration of Texas without complication arising from the laws enacted up to the present time in relation to colonization, the provisions of which, in so far as they are in conflict with the present law, are hereby repealed (Deragon)," the prohibition of the 11th article of the law of April 6, 1830, being renewed. Thus it will be seen that the 7th article of the law of 1824 and the 11th article of the law of April 6th, 1830, the latter being merely the exercise of the power reserved by the former, were continued in force. The law of April 4th, 1837, applied to all the vacant lands that belonged to, or ought to belong to, the nation, and every acre of it, under the express provisions of the act, was to be colonized (if at all) by means of sales, leases, and mortgages, except such as might be disposed of under the reservation in favor of soldiers, etc. The proceeds arising from such sales, leases, and mortgages were to be paid on the public debt. All former laws on colonization in conflict with its provisions were repealed. The language seems too clear for misconstruction. It followed necessarily that all former colonization laws which provided for the gratuitous colonization of any part of the public domain were in direct conflict with it. The same land could not be colonized under the provisions of this law at 10 reals per acre, and at the same time be gratuitously colonized under the law of 1824.

In the decision of questions arising under these laws we should look to the construction put upon them by the highest officials of the Mexican government. There are no reported decisions of their judicial tribunals. We must, therefore, look to the legislative and executive departments.

I have shown that a law was passed on the 26th of Janu-
178 ary, 1831, which established a general department of the revenue, and that a circular of the Treasury Department was issued on July 7th, 1831, and the general regulations for collecting the revenue belonging to the Republic by sales, etc., were issued July 20th, 1831. On the 17th day of April, 1837, an act was passed to make effective the colonization law of April 4, 1837. This law provides for a new board of sale and regulations in relation to the disposition of the public lands, and continued in force all former laws

in relation to collecting the revenues not in conflict with it, and article 92 makes it the duty of the officers created by the act to discharge all the duties of the officers under former laws not in conflict with it, so that it will be seen that the regulations for collecting the revenue belonging to the Republic contained in all former laws not in conflict with said act of April 17th, 1837, became a part of the general revenue laws and regulations of the central government, and was to be enforced by the board of sale created by that act (Report Amellego, p. 330), and that act of April 17, 1837, together with the revenue laws and regulations adopted by it, constituted a complete system of collecting the revenue of the central government at that date, and all the public lands were to be disposed of by public sales, all contracts for sale to be approved by the government before they were made.

On April 12, 1837, an act was passed which provided a scheme for funding the national debt, and the following September a convention was made with the English holders of Mexican bonds for the purpose of getting the creditors to accept the scheme provided for funding the national debt and providing for its ultimate payment by means of sales and mortgages of the public lands, as provided by the law of April 4, 1837.

The creditors objected to the reservation in favor of soldiers, etc., contained in said act of April 4, 1837.

The result of the convention was that terms were agreed
179 upon by the Mexican officials having the matter in charge and the creditors of the government. The terms of the agreement were reported to the Mexican Congress, and on June 1st, 1839, an act was passed approving the same and providing the means for carrying it out. C. L., vol. 3, p. 624, No. 2056.

The 5th article of said act provides "That the reservation provided for in the law of April 4th, 1837, shall be satisfied as follows: As to those lands that were to be given as rewards to soldiers of Independence, their selection was to be made in Yucatan and the Californias; those which might be granted to Indians, to be located on the frontiers, and those that might be given to soldiers who had participated in the restoration of Texas were to be located along the coast on the gulf of Mexico within a distance of twenty-five leagues from the seashore." Article 3 provides: "With respect to the colonies which may be established in virtue of this convention, the government will take care that the laws now in force or those which may be enacted hereafter on the subject of colonization shall be observed in all respects in which they do not conflict with the convention itself." The agreement in relation to funding the national debt provided for two classes of security. The first was bonds, the second land warrants. The interest on both was secured by a pledge of certain customs revenues. The land warrants were to be satisfied by location upon the vacant public land at the rate of four acres per pound, but such location was subject to restriction under the 4th and 7th articles of the law of August 18th, 1824, and the 11th article of the law of April 6th, 1830.

These articles relate to foreigners within the border lit-oral leagues,

and are the only provisions of either of those laws that remain in force.

As further security for the consolidated debt, the Mexican government mortgaged 100,000,000 acres of land in the departments of California, Chihuahua, New Mexico, Texas, and Sonora as a
180 special guaranty fund until the debt was paid, but provided that the mortgaged land might be sold at not less than four acres per pound, and proceeds to be paid by the purchaser to the agent of the government at London, to be applied to the payment of said consolidated debt. Also 25,000,000 acres were especially set aside in the department nearest the Atlantic upon which the land warrants might be located. This law also provided for a bureau of colonization, to be composed of three persons, who were to be under the immediate control of the supreme government. They were to survey the landmark, boundaries, etc., and carry out the policy declared by the convention of September, 1837, in relation to funding national debt. Hall's Mexican Law, pp. 115 to 119.

The scheme for funding the national debt shows that neither the officials of the Mexican government nor the English holders of Mexican bonds believed that the colonization law of 1824 was in force. Before consenting to the scheme proposed by Mexico the English creditors required that the land which might be granted under the reservations of the law of April 4th, 1837, should be specifically located. The reason for this instance is obvious. They wanted to be able to determine about the value of the land to be pledged as security for the consolidated debt, and this they could not do unless they knew about the quantity and location of the land to be pledged.

The creditors also required that colonists which might be established in virtue of the convention, that the government should see that the laws now in force or those which might be enacted on the subject of colonization should be observed. The law of April 4th, 1837, then in force, provided that the public lands should be colonized by sales, etc., for not less than 10 reals per acre, the proceeds to be applied on the national debt. So the creditors were deeply interested in providing for the enforcement of this law.

181 It also provided, as I have shown, that one hundred million acres of land was pledged as a special guaranty for the payment of the consolidated debt, which land might be colonized by the Mexican government (provided the agreement made by the convention should be ratified) at not less than 1.25 per acre, the proceeds to be applied on the debt. The creditors were therefore interested in having this provision carried out when it became a law; but all this precaution was not only useless, but worthless, if the governors of the several departments could have gratuitously colonized the public lands of the government by granting fourty-eight thousand acres to any person who might comply with the provisions of law of 1824 and regulations of 1828.

The creditors would not have been interested in having any colonization law carried out by the government of Mexico that provided for the disposition of the vacant public lands otherwise than by sales, lease, etc.

There is no presumption in favor of the power of the governor of the departments to make grants to the vacant lands belonging to the Mexican nation.

See U. S. *v.* Cambuston, *supra.*

Jones *v.* Garza, *supra.*

The constitutional laws of December 29th, 1836 (sixth law, page 254, volume 3, Legislacion Mexicano), defines the duties and powers of the governors of the departments as follows:

"Article 7. The duties of the governors are: I. To take care of the preservation of public order in the internal matters of the department. II. To dispose of the armed forces that the laws give him right to dispose of, for that purpose. III. To comply with and make others comply with the decrees and orders of the general government and the acts of the departmental boards (junta departmental), which shall have received the previous approval of Congress, in those cases in which that approval is
182 requisite. IV. To send to the general Congress, together with his report, all the acts of the departmental (junta). V. To make the appointment of prefects approve the appointment of subprefects in the department, confirm that of justice of the peace, and to remove any of these said officers, having first sought the opinion of the departmental (junta), touching the removals. VI. To make the appointment of such officers of the department whose appointment is not reserved to other authority. VII. To suspend as long as for three months and deprive of as much as one-half of their salaries for that time, any of the officers of the department. VIII. To suspend the ayuntamientos of the department by the consent of the departmental (junta). Whenever the governors shall have made use of any of the powers granted to them in this and the foregoing paragraphs they shall at once report the matter to the general government in order that it, according to its powers, may provide what it thinks proper in the matter of the said suspension. IX. To settle such doubts as may come up in the matter of elections of the ayuntamientos, and to accept, or decline to accept, the resignations tendered by that body. X. To make use of the exclusive prerogative mentioned in article 12, paragraph 17, and article 22, paragraph 8, of the fifth constitutional laws (which articles provide that he shall preside over the departmental board and in a case of a tie to cast a vote, but at no other time). XI. To urge the courts and judges to the prompt and just administration of justice, reporting the faults of the same to the proper superior authorities. XII. To exercise vigilance over the offices of the revenues (hacienda) of the department in such manner as shall be provided by law."

Decrees and orders of the provisional government, volume 2, from July, 1842, to June, 1843, called "Organic Bases," prescribe the powers and duties of the governors as follows:

"Article 140. The duties of the governors of the department are:

183 I. To maintain public order in the internal affairs of the department.

II. To publish the laws and decrees of the national Congress and the decrees of the president of the Republic, three days at the latest after receipt of the same by him, seeing to it that they are obeyed and complied with in the territory over which they have authority.

III. To publish the decrees of the departmental assembly and see to it that they are obeyed and complied with.

IV. To send to the supreme government the decrees of the departmental assemblies.

* * * * * * *

Article 142. The powers of the governor of the department are:

I. To return within eight days to the departmental assembly the decrees enacted by the same whenever he deems them repugnant to these bases or the laws. Should the assembly after the return insist on their passage, the governor will then send them within eight days to the government for the purposes stated in paragraph XVII of article 66, in the meantime suspending their publication.

II. To return to the departmental assembly once within eight days, such decrees as are passed by them which shall not be repugnant as stated in the foregoing article, giving the reasons that he shall have against their enactment. Should the assembly still insist upon their passage, he nevertheless shall not fail to publish the same.

III. To appoint the inferior political officers of the department.

IV. To appoint the officials whose offices shall be created to collect and distribute the revenues belonging to the department. In the making of these appointments the present incumbents shall be allowed to remain in office.

184 V. To propose with the concurrence of the departmental assembly to the president of the Republic, judges of the court of record, and assessors, after hearing in all cases the reports of the superior courts.

VI. To discharge in the case of employees of the department that same power given to the president by paragraph 8, article 87, and to impose fines on those who shall be guilty of disrespect, in such cases and manner as the law may provide.

VII. To take care that justice be administered without delay in the department, in the same manner as it is the duty of the president of the Republic to do so.

VIII. To be *ex officio* president of the departmental assembly with a right to vote in the proceedings in case of a tie, since he has no right to vote on the strength of his election.

IX. To dispose of the police forces for the ends for which they are instituted.

X. To be the chief of the public hacienda of the department, and with regard to the federal hacienda, he shall exercise such vigilance as the laws grant to him.

XI. To grant the permits for the establishment of public literary societies, or charity associations, and to revise their by-laws amending them in whatever is repugnant to the laws and to public order."

The governors had no power or authority to make grants of the public lands by virtue of their office, and I have shown that no

such power was conferred upon them by law. The constitution of 1836, prohibiting them from exercising any power not conferred by law, is as follows: "Restrictions on the governors and departmental juntas.—They cannot exercise any other authorities than those which are designated by law. The violation of this part of this article and the two preceding ones being a matter of the greatest responsibility." (See constitution of 1836, 6th law, section 15, para-
185 graph 3, volume 3, Legislacion Mexicano, page 256.) The regulations of 1828 applied alone to the lands in the Territories and authorized the governors, with the approval of the provincial deputations, to grant the public land.

But these regulations could not apply to the governors of the departments and departmental (juntas), (boards) created after the provisional deputations and the office of territorial governors had been abolished, unless Congress had so directed.

I have shown that the States and the Territories of the Republic were abolished and a new constitution adopted in 1836, and the former States and Territories made departments of the central government. The regulations of 1828 never did apply to the public lands in the States, and certainly could have had no application to the lands in the departments, which had formerly been within the States. The chief executive of the Mexican Republic never had any authority to dispose of the public lands or to confer power on any one else to do so, unless he was authorized by some law of Congress. He derived his authority to make the regulations of 1828 from article 15 of the law of August 18, 1824 (Hall's Mexican Law, section 501, page 149).

If the regulations of 1828 applied to the public lands in the departments which had formerly been within the Territories, no land could have been colonized under the law of 1824 or regulations of 1828, except in such departments. The legal title to all the vacant public land was in the nation and could not be conveyed by any one for any purpose without an act of Congress authorizing it to be done. Article 5 of the law of the 18th of August, 1824, provides that "if for the defense or security of the nation, the government of the federation should see fit to use any portion of these lands to construct warehouses, arsenals, or other public buildings, it might do so, with the approval of the general Congress (Hall's Mexican Law, section —, page —)." On the 6th day of April, 1830, Congress passed the following law: "Article 3. The executive shall have power
186 to take the lands he may consider suitable for fortifications or arsenals * * * (Sec. CL, vol. 11, page 154, No. 691)." So it will be seen that before the chief executive could appropriate public land for public purposes he must be authorized to do so by an act of Congress.

The officials in New Mexico paid no sort of attention to the laws regulating the disposition of the public lands. The records of the provincial deputation at Santa Fé are in evidence in this case, and from them it appears that the regulations of 1828 were entirely ignored, and that it was almost the universal custom of that body to make grants of land, so far as I am able to learn, without refer-

ence to quantity or quality. Petitions were addressed to the provincial deputation, a resolution passed appointing a committee to examine and report as to whether or not the land asked for should be granted. On the coming of a favorable report it was adopted and an alcalde appointed and directed to put the petitioner in juridical possession and the secretary directed to give him a certificate of title. About the same time and in the same town the governor was also making grants without reference to the action of the provincial deputation. In a number of instances the prefects (officers having a sort of police power in the subdivision of the department) were making grants to a large tract of land (some of which have been confirmed by Congress); so it appears that it was a poor officer, indeed, who di- not assume to be able to dispose of the public domain belonging to the nation.

The colonization law of November 27, 1846, and decree of December 4th, 1846, cover the whole subject of colonizing the vacant land belonging to the nation; but the colonization law of August 18, 1824, is not alluded to, and there is no authority in that law to dispose of the public land except by sales, etc. It is, however, decreed by the law of November 27th, 1846 (Hall's Mexican Law,
187 page 119), that, "in conformity with the provisions in the sixteenth article of the regulations issued for the execution of the law of the first of June, 1839, the board of colonization is established under the immediate consent of the department of relations. Which board shall be composed, as provided in the foregoing regulations, of three persons appointed by the supreme government." This law of June 1, 1839, as I have shown, approved the terms of settlement made by Mexico with her creditors in the convention of 1837, and created a national board of sale for the purpose of colonizing the land by sales, etc., as provided for in the law of April 4th, 1837. These regulations are recognized as being in force in 1846, and its provisions are referred to and adopted by that law. There was no time from 1837 to the date of the treaty in 1848 that there was not in existence a national board of sale fully authorized and empowered to sell and convey all the vacant lands belonging to the nation which were subject to taxation. It can make no difference, so far as this grant is concerned, whether the law of August 18th, 1824, was repealed or only suspended, as claimed by the petitioners. If suspended, the law suspending was in force when this grant was made. I am aware of the fact that in the case of The United States *v.* Vallejo, 1 Black, page 553, and the case of United States *v.* Vigil, 13 Wallace, page 449, and a number of other cases arising under the act of March 3rd, 1851, relating to Mexican grants to land in California, the Supreme Court of the United States held that the Mexican law of August 18th, 1824, and the executive regulations of 1828 *was* all the law in force in relation to making grants to the public lands belonging to the nation, except those relating to missions and towns. In the Vallejo case the court said:

"Now, the above are the only laws of the Mexican Congress passed on the subject of granting the public lands (meaning the law

of August 18th, 1824, and regulations of 1828), with the exception of those relating to missions and towns, which have no bearing on the question. None other have been produced on the argu-
188 ment, nor have our researches found any, nor were any ever discovered by the public agents which were authorized by this Government to inquire particularly into the subject. See Halleck's Report, March 1, 1849, executive document, 1st session, 31st Congress, page 1191. See also 3 Cal.s Reports, pages 23, 24, 25; *id.*, 37; 20 Howard, page 63; 21 *id.*, —; 23rd *id.*, page 315; 24 *id.*, page 349."

The general rule is that questions repeatedly before the Supreme Court and decided in the same way are not open for readjudication.

Wright *v.* Sill, 2 Black, page 544.
Minnisota Mining Company *versus* National Mining Company, 3 Wallace, page 332.

The rule in these cases is somewhat modified and explained in the case of Gaines *versus* Henson, 24 Howard, page 553.

But this case stands on entirely different grounds from any alluded to in any of the decisions I have been able to find. It is manifest from an examination of the reports and decisions of the Supreme Court referred to in the Vallejo case that a number of the laws and regulation- for the colonization of the public lands of the government of Mexico passed after the adoption of the central system in 1836 have never been considered by that court, and, as I have shown, said laws and regulations in terms deal with the whole question of colonization and are in direct conflict with the law of August 18th, 1824, and regulations of 1828. The correctness of the decisions of that court based on the law before it is not challenged, and on an appeal in this cause the court would only be called upon to examine laws and regulations of the Mexican government in regard to the disposition of her public lands in force at the date of this grant which have never been presented to that court for adjudication. It has never been held by that or any other court of last resort (that I have been able to find) that when it appeared to the satisfaction of the court that a former decision had been based wholly on a statute which had been repealed prior to such decision that such decision would
189 not be held an exception to the rule of *stare decisis* unless some party to the suit not then before the court or some other party before the court had acquired property rights based on such former decision. The titles to all the land in California claimed under Spanish or Mexican grants have long since been settled and could not be affected by any decision which might be rendered in this case in relation to the land laws of Mexico.

The decisions of the Supreme Court of the United States made under the act of March 3rd, 1851, do not constitute a rule of property in this case; they were rendered long subsequent to the making of this grant, and subsequent to the treaty of Guadalupe Hidalgo.

So it is not possible that any right to the property in question which this court can consider should have been acquired on the faith of such decisions.

The claimants' rights (if any) depend on the law of Mexico in force at the date of the change of flags.

See McMicken *versus* United States, 97 United States, page 204;
Steinback *versus* The United States, 11 Wallace, page 566.
United States *versus* Dingley, 12 Peters, page 467.

"This court, in passing upon the rights of claimants, or the United States, must be controlled by the law of nations, the stipulation of the treaty, and the laws and ordinances of the government making the alleged grant." See section 7, act of March 3rd, 1891, 26 Statutes at Large, page 854.

(S'd) WILLIAM W. MURRAY,
Associate Justice.

December 20, 1898.

[L. S.]

A true copy.
JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

190 And thereafter, to wit, on the 16th day of December, 1898, the argument of the case was concluded and the matter submitted to the court for decision, and was by the court taken under advisement.

And be it further remembered that thereafter, to wit, on the 20th day of December, 1898, the court rendered its decision in the words and figures following, to wit:

Decree.

In the Court of Private Land Claims, Santa Fé District, 1898.

JOEL PARKER WHITNEY ET AL. *vs.* UNITED STATES. } No. 152. Estancia Grant.

This cause having been at a former day of the present term tried and submitted and taken under advisement by the court upon full legal proof and hearing, and the court, upon consideration and examination of said cause, being sufficiently advised in the premises, doth find that said petition for the confirmation of the private land claim known as and called "the Estancia grant," situate in the counties of Valencia and Bernalillo, Territory of New Mexico, and described as follows, to wit, bounded on the north one league from the Berrendo springs, the said spring being included in the possession; on the south one league from the Salt lakes, the said lakes also being so included; on the east the little hills of the Pedernal, with the range thereof, and on the west the water of the Mesteñas,

said grant being reported No. seventy (70) in the office of the surveyor general of New Mexico, has not been sustained by satisfactory proof, and that the title so ascerted to the tract of land alleged to have been petitioned for by Antonio Sandoval on December 5, 1845, to the governor of the department of New Mexico, and alleged to have been granted to said Sandoval by Manuel Armijo, governor of said department, on December 7, 1845, and juridical possession of which is alleged to have been conferred upon said Sandoval by Jose Baca y Ortiz, justice of the peace of Real del Oro, on December 15, 1845, is of no validity, and that the grant or concession so claimed is not such an one as the United States are bound to recognize and confirm by virtue of the treaties of cession by Mexico to the United States, by the laws of nations, or by the laws or ordinances of Spain and Mexico.

191

It is therefore ordered, adjudged, and decreed that the said claim to the said tract of land be, and the same is hereby, rejected and said petition dismissed this December 20th, 1898.

JOSEPH R. REED,
Chief Justice.

192 In the Court of Private Land Claims of the United States, Santa Fé District, New Mexico.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Defendants.
No. 152.

Petition for Allowance of an Appeal in the Above-entitled Cause.

The above-named Joel Parker Whitney and Franklin H. Story, plaintiffs in the above-entitled cause, wherein the final decision and decree of the court of private land claims of the United States were made and entered at Santa Fé, in the Territory of New Mexico, on the twentieth day of December, in the year 1898, conceiving themselves aggrieved by the said decision and decree in that their petition for the confirmation of the land grant known as the Estancia (or Antonio Sandoval) grant was thereby rejected, do hereby appeal from the said decision and decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which the said decision and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

And the said plaintiffs (appellants) further pray that due citation upon this appeal may be issued and may be directed to and served upon all and singular the defendants in the said cause (appellees).

Dated Denver, Colorado, June 7, 1899.

JNO. H. KNAEBEL,
Attorney for Plaintiffs and Appellants.

[Endorsed:] No. 152. In the court of private land claims of the United States, Santa Fé district, New Mexico. Joel Parker Whitney *et als.*, plaintiffs, *vs.* The United States of America *et als.*, defendants. Copy. Petition for allowance of an appeal. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

193 In the Court of Private Land Claims of the United States, Santa Fé District, New Mexico.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Defendants. } No. 152.

Upon the proceedings heretofore had and now of record in the above-entitled case (No. 152) in the court of private land claims of the United States, and upon reading the foregoing petition of the plaintiffs and appellants herein, on motion of John H. Knaebel, Esq., attorney for the said plaintiffs and appellants, it is ordered that the appeal prayed by the said plaintiffs and appellants in and by their said petition be, and the same is hereby, allowed, and the same is hereby made returnable in the Supreme Court of the United States on the eighth day of August, 1899.

Witness Hon. Joseph R. Read, chief justice of the court of private land claims of the United States, on this ninth day of June, 1899.

WILLIAM W. MURRAY,
Acting Chief Justice.

[Endorsed:] No. 152. In the court of private land claims of the United States, Santa Fé district, New Mexico. Joel Parker Whitney *et als.*, plaintiffs, *vs.* The United States of America *et als.*, defendants. Copy. Allowance of appeal in the above-entitled cause. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

194 Know all men by these presents that the undersigned, Joel Parker Whitney and Franklin H. Story, as principals, and George W. Knaebel and John H. Knaebel, as sureties, are held and firmly bound unto the United States of America, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this ninth day of June, A. D. 1899.

Conditioned that whereas the said Joel Parker Whitney and Franklin H. Story have taken an appeal from the decision of the court of private land claims of the United States in the case of Joel

Parker Whitney and Franklin H. Story against The United States of America and others, the said obligees, which appeal is returnable on the eighth day of August, 1899:

Now, if the said appellants shall prosecute the said appeal without delay and with effect and pay all costs that may be adjudged against them or any of them upon the said appeal, then this obligation shall be void; otherwise the same shall remain in full force.

JOEL PARKER WHITNEY, [SEAL.]
FRANKLIN H. STORY, [SEAL.]
By JNO. H. KNAEBEL, *Their Attorney.*
—— ——. [SEAL.]
JNO. H. KNAEBEL. [SEAL.]

Approved June 9th, 1899.

WILLIAM W. MURRAY,
Acting Chief Justice.

[Endorsed:] No. 152. In the court of private land claims of the United States. Joel Parker Whitney *et al. vs.* The United States of America *et als.* Copy. Bond on appeal. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

195 In the Court of Private Land Claims of the United States, Santa Fé District, New Mexico.

JOEL PARKER WHITNEY and FRANKLIN H. STORY, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, ELOISA BERGERE, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, Defendants. } No. 152.

Citation on Appeal to Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan, defendants and appellees, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the eighth day of August, A. D. 1899, pursuant to an appeal filed in the office of the clerk of the court of private land claims, wherein Joel Parker Whitney and Franklin H. Story are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, this 9th day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

WILLIAM W. MURRAY,
Acting Chief Justice, Court Private Land Claims.

196 We hereby acknowledged service upon us of the foregoing citation this 9th day of June, A. D. 1899, in cause No. 152, court of private land claims of the United States, Santa Fé district, New Mexico.

MATT. G. REYNOLDS,
United States Attorney.
JAMES W. VROOM,
Attorney for Defendants and Appellees, Eloisa Bergere, A. M. Bergere, Mary J. Otero, Miguel A. Otero, Page Otero, Mamie J. O'Bryan, and Harry J. O'Bryan.

[Endorsed:] No. 152. Court of — land claims of the United States, Santa Fé district, New Mex. Joel Parker Whitney *et al. vs.* The United States of America *et als.* Citation. Filed June 9th, 1899. James H. Reeder, clerk, by Ireneo L. Chaves, d'p'ty. Jno. H. Knaebel, Esq., attorney for plaintiffs and appellants.

197 UNITED STATES OF AMERICA, } *ss:*
Territory of New Mexico, }

JOEL PARKER WHITNEY ET AL. }
vs. }
UNITED STATES. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 196 pages contain a full, true, and perfect transcript of record entries and proceedings and of all the files and papers in the cause lately pending in said court in which Joel Parker Whitney *et al.* were plaintiffs and The United States of America was defendant, as the same appear of record and on file in my office.

Witness my hand and the seal of said court, at my office, in Santa Fé, New Mexico, this 3d day of August, A. D. 1899.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy.*

Endorsed on cover: File No. 17,513. Court of private land claims. Term No., 133. Joel Parker Whitney and Franklin H. Story, appellants, *vs.* The United States, Eloisa Bergere, *et al.* Filed September 16th, 1899.

Fo. 133.
Sty. of Knaebel for Pltf.
Office S
FE
No. 133.

Filed in the Feb. 23, 1901.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

JOEL PARKER WHITNEY AND FRANKLIN H. STORY,
Appellants,
vs.
THE UNITED STATES, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

ARGUMENT OF JOHN H. KNAEBEL AND ERNEST KNAEBEL, COUNSEL FOR THE APPELLANTS.

JNO. H. KNAEBEL,
ERNEST KNAEBEL,
of Counsel for Appellants.

DUNBAR & WILLIAMS, PRINTERS, 508 CHARLES BLOCK, DENVER.

INDEX.

	Page.
Statement and Analysis, including illustrative notes	1-37
Summary of the four propositions discussed	37-38
First Point	38-53
Second Point	53-67
Third Point	67-81
Fourth Point	82-119
English Translation of opinion of Senor Eduardo Ruiz, Attorney General of Mexico, on the representative authority of Governor Armijo	112-119
Conclusion	119-126

APPENDIX.

(Spanish) Opinion of Senor Don Eduardo Ruiz	1-7
Dissenting Opinion of Associate Justice Stone	8-10
Separate Opinion of Chief Justice Reed	11-14

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

JOEL PARKER WHITNEY AND FRANKLIN H. STORY, *Appellants*, vs. THE UNITED STATES, ET AL., *Appellees.*	No. 133. *Appeal from the Court of Private Land Claims.*

ARGUMENT OF JOHN H. KNAEBEL AND ERNEST KNAEBEL, COUNSEL FOR THE APPELLANTS.

Statement and Analysis.

The United States Court of Private Land Claims, sitting at Santa Fé, New Mexico, having (STONE, J.,

dissenting), on the twentieth of December, 1898, made its decree rejecting the Mexican land grant known as the Estancia grant (and sometimes called the Antonio Sandoval grant), affecting a large tract of land in the county of Valencia in that Territory (*Transcript*, fol. 190), the claimants, Joel Parker Whitney and Franklin H. Story, of Boston, Mass., now seek by the present appeal (*Ib.*, fols. 192, 193, etc.) to have the said decree reversed and the grant confirmed.

The private persons named among the appellees, although duly cited (*Ib.*, fols. 195, 196), do not contend, for they were made parties only because they were claimants of the alleged Bartolomé Baca grant, which was finally rejected by this court before the present case was tried below. (*Bergere vs. United States*, 168 U. S. 66, wherein the opinion, at pages 78, 84 and 85, refers to certain conflicting subsequent grants, including the Estancia.)

The following facts were proved on the trial, in support of the allegations of our petition, viz.:

1. Antonio Sandoval, when he petitioned for the grant in question, was a resident Mexican citizen, of high distinction, who had theretofore, for many years, served the Republic of Mexico as a civil and military officer, and also greatly aided the said republic by loans and advances of large sums of money out of his private estate, for which the said republic was then his debtor. (*Ib.*, fols. 2, 3, 70, 71, 72; also testimony of Mr. Tipton, fols. 43, 44; also declaration of the surveyor general, that "it is a matter of history and common notoriety that Don Antonio Sandoval was, under the Mexican rule, a man of great activity, wealth and influence, and that his government owed him for many years

large sums of money, which it was either unable or unwilling to pay him," fol. 89; also Bancroft's History of Arizona and New Mexico, pages 310 (note), 315 (note), and 322, showing that Prefect Sandoval was, in 1841, summoned to act as governor, while Armijo was absent on a campaign against the Texan invaders.)

2. On or before the seventh day of December, A. D. 1845, when New Mexico was still one of the co-equal uniform departments of Mexico, under the central system of administration, Antonio Sandoval presented to Manuel Armijo, governor and military commandant of that department, and who was "the *only* and *necessary* conduct of communication with the Supreme Authorities of the Republic" (Decree of June 13th, 1843, Art. 141; Reynolds, 247), a written petition (*Transcript*, fols. 3, 70, 75), signed by him, and dated on the fifth day of the same month, whereby he prayed the said governor, "*in the name of the supreme authority of the Mexican nation*," to grant him in possession *integram* the Salt Lakes tract, assigning as boundaries towards the north one league from the Berrendo Spring, the said Berrendo Spring being within the possession, and towards the south from the Salt Lakes another league; on the east the little hills of the Pedernal, and on the west the water of the Mesteñas, and whereby he represented to the said governor that the tract of land so solicited was vacant and in a condition of mortmain *(á manos muertas)*, that the grant so solicited would be without prejudice to any third party, and that he desired to use the said tract for the pasture of his live stock, which was considerable.

In the petition, Sandoval recited that for up-

wards of thirty years he had been rendering services to the country, as well with his person as with his estate, without having interposed the least objection, and without having received any compensation, and therefore he asked that the grant be made in *compensation* for such services *(á mosion de recompensa á los servicios q. dejo referidos)*, and free and exempt from tax. He expressly prays the grant "for the sake of *justice*."

With his petition, Antonio Sandoval submitted to the governor for his consideration an official certificate of José Serafin Ramirez y Casanoba, comptroller of the departmental treasury and acting treasurer of the same, dated on the sixth day of the same month, whereby the said comptroller and acting treasurer certified that, during the period of forty years (as appeared from records of the treasury), the said Antonio Sandoval had been serving the nation as a military and civil officer, and also that he had loaned numerous sums of money to the treasury of the nation without receiving one half real interest, and that there were then large sums due him, as appeared from the entries in the office of the said comptroller and treasurer and the evidences in Sandoval's possession, on account of salaries and loans. *(Ib.*, fols. 72 and 77.)

3. The solicited grant was then made, in absolute terms as follows *(Ib.*, fols. 71, 76):

"Santa Fe, December 7, 1845.

"This government, being convinced of the valuable [in the original '*análogos*'] services Don Antonio Sandoval has rendered, and is now rendering, the country, during the time to which he refers, as also during the six years he served administer-

ing the prefecture of the Second district, with the salary of one thousand five hundred dollars, of which not even a half real has been paid to him, the sum due him amounting to nine thousand dollars, and the *statements in this petition being true*, I do, in the exercise of the power in me vested by the laws *(las facultades que me conceden las leyes)*, and also in consideration of all the premises, and as a just title acquired *(como con justo titulo adquirido)*, make him the grant for the land he solicits, with all the dimensions and pasture land he asks, that he may enjoy the same *in the name of the supreme government* (*supremo gov'no*) of the Mexican nation, and under my concession free and exempt from all tax or tribute.

"MAN'L ARMIJO."

4. On the fifteenth of December, 1845, juridical possession, or livery of seisin, of the granted premises was duly delivered, and the magistrate officiating, José Baca y Ortiz, executed, with his attending witnesses, Joaquin Somohano and Pablo Delgado, the proper written act, or instrument, of juridical possession, "that it may serve him as formal title." *(Ib.*, fols. 73, 78, 79.)

5. As appears by the certificate of the register, Donaciano Vigil (secretary under the American provisional government), endorsed on the title papers, the same were recorded in Book B, folios 166 and 167, and so certified November 17, 1849. (*Ib.*, fol. 74.) This "Book B" is one of the missing archives of the government, although it did not disappear until about 1879. *(Ib.*, fols. 47, 50.) It was kept under the compulsory provisions of the Kearny Code, promulgated by General Kearny, September 22, 1846, published as part of the Compiled Laws of

New Mexico of 1897. *Vide* title "Register of Lands," pages 85, etc., of that compilation. We cite the said provisions next below:

"REGISTER OF LANDS.

"SECTION 1. An office, called the office of the register of lands, is established, which shall be kept at the city of Santa Fé.

"Sec. 2. Until otherwise directed by law, the duties of said office shall be discharged by the secretary of the Territory.

"Sec. 3. The register shall procure for the use of his office large, well-bound books, wherein shall be recorded, in fair, legible hand, all instruments of writing herein required to be recorded.

"Sec. 4. It shall be the duty of the register of lands to record all papers and documents of and concerning lands and tenements situated in this territory, which were issued by the Spanish and Mexican governments, remaining in the archives of the secretary of the territory, or which were in any of the offices of the department of New Mexico under the Mexican government.

"Sec. 5. Every person claiming lands in this territory, by virtue of any Spanish or Mexican grant, may deliver to the register of lands a notice in writing, stating the nature and extent of his claim, and shall also at the same time deliver to the register of lands, for the purpose of being recorded, the grant, order of survey, deed of conveyance, or other written evidence of his claims, and the same shall be recorded by the register, for which the party shall pay him twelve and one-half cents per hundred words contained in such written evidence of the claims.

"Sec. 6. When there is no written evi-

dence of the claim, the claimant may take evidence in writing, before some officer having authority to administer oaths, showing the nature and extent of his claim, how much of the land claimed has been actually cultivated and inhabited by himself, and those under whom he claims, and for what length of time; and also as to any grant, deed or conveyance relating to said land having ever existed, or any record thereof having ever been made, and as to the loss or destruction of the same, and how and when such loss and destruction happened. If any person shall neglect to deliver such evidence and notice of his claim, as prescribed in this and the preceding section, within five years from the first day of January such claim shall be void.

"Sec. 7. The register of lands shall communicate to the governor, or either house of the general assembly, such information relating to his office as may be called for by them respectively. He shall also transmit to the commissioner of the general land office, at the city of Washington, once a year, beginning on the first day of January, 1848, a fair abstract of all lands claimed as aforesaid, for which services he shall be paid ten cents per hundred words contained in the said abstract, by the United States.

"Sec. 8. The register of lands shall procure, keep and use a seal of office, and shall furnish every person desiring it a certified copy of any record or paper in his office, authenticated by such seal, and shall receive for every copy at the rate of ten cents for every hundred words contained in it, and one dollar for the certificate and seal, to be paid by the applicant.

"Sec. 9. The register of lands shall faithfully keep all records, books, papers and

effects committed to his care, and shall not permit any book or paper to be taken out of his office unless the same be called for by the governor, the general assembly, or the constituted authorities of the United States.

"Sec. 10. Nothing contained in the fifth and sixth articles of this law shall be taken to include infants, married women, persons of unsound mind, nor those without the government of the United States, while such disabilities continue.

"Sec. 11. For every willful neglect of duty, or willful violation of laws in his office, the register of lands may be indicted, and, upon conviction, shall be removed from office and fined not exceeding one hundred dollars."

The Kearny Code was sanctioned judicially in *Leitensdorfer vs. Webb*, 20 How. 176, 177.

6. Antonio Sandoval, having thus acquired and received in his absolute possession, "*con justo titulo adquirido*," the large, well-defined tract of vacant public land, which had been granted to him in consideration and consequent *satisfaction* of his long-neglected, lawful claims against the Mexican government, retained the same under the solemn juridical livery of seisin, from which his *possessio pedis* dates, all through the following war, which lasted from May 13th, 1846, until the treaty of peace, dated February 2d, 1848, and proclaimed July 4th, 1848, and, four days after that proclamation, he conveyed the estate to his nephew, Gervacio Nolan, by an instrument (*Transcript*, fols. 80, 82), dated July 8th, 1848, whose authenticity is not questioned by the government (*Vide* answer, paragraph V; Transcript, fol. 35). In this conveyance, Antonio Sandoval says:

"It is my will to donate, as I do in effect donate, freely and legally, unto my nephew, Gervacio Nolan, the property of the Salt lakes, which was given and granted to me by the governor of the department of New Mexico, *in the name of the supreme government of Mexico*, on the seventh day of December, 1845, as evidenced by the foregoing deed of grant *(segun lo acredita el anterior titulo de donasion)*, marked with the letter 'A,' in virtue whereof I convey unto the aforesaid Nolan all the right, title and dominion held by me in said land, that he may enjoy the same as his lawful property."

Then follows a correct statement of the boundaries, after which the grantor adds:

"And, if my descendants or ascendants should raise any objection to this donation, I pray the magistrates that they be not heard in court or out of it, for such has been my will, and I desire the words of this instrument of conveyance *(esta Escritura Traspasada)* to be made durable and binding, and I also desire that the aforesaid Nolan shall enjoy the said land free from tax, tribute, mortgage *('ypoteca')*, or other incumbrance *(enagenacion)*, as well himself as his wife, children, heirs and successors, without there being any one to interpose against him any suit or other opposition at any time."

Since General Kearny took possession of New Mexico on the eighteenth of August, 1846, that district of country had been under American provisional government for nearly two years before the date of this conveyance. Hence it was personally acknowledged by Antonio Sandoval *(Ib.*, fols. 81, 83) on the

day of its date, before the clerk of the Circuit Court, appointed by Kearny for the county of Bernalillo.

NOTE.—The recital in this conveyance of the fact that the grant was *marked with the letter "A"* is abundant evidence that that distinguishing letter ("A"; *Transcript*, fol. 71) was on the grant at least fifteen months before the date of the certificate of registration by the register, Donaciano Vigil, November 17th, 1849, and consequently upwards of six years before the creation of the office of surveyor general for New Mexico (July 22d, 1854).

On the first of January, 1850, Gervacio Nolan (under the English form of his Christian name) made to Rufus Beach an indenture of lease, so-called, of the said property, for the term of five years (*Transcript*, fol. 87), which indenture reserved no annual rent, but was apparently executed in consideration of the covenant of Beach—

> "To occupy said premises for agriculture and procuring salt from the lake, and to construct one or more house or houses and corral for the convenience of workmen and the herding of stock on the premises, and to pay all Government taxes which may be assessed on all such part or parts of said premises as he shall occupy, and at the end of said term surrender said premises, with all the improvements thereon, to said Nolan."

Then follows a covenant by Nolan that—

> "On condition that the said Beach is successful in improving the premises, and makes them valuable, then the said Beach shall be entitled to the equal half part of the

rents and profits of the same for the five years next ensuing the term of this lease."

The instrument was witnessed by M. Ashurst and M. F. Tuley, respectable members of the bar, who afterwards were of record in *Leitensdorfer* vs. *Webb*, 1 N. M. 34.

It was afterwards recorded on pages 63 and 64, Vol. 4, of Land Claims Record, in the office of the surveyor general. (*Transcript*, fol. 88.)

NOTE.—The apparently generous terms of this document are significant evidence of the low value of unwatered lands in New Mexico at that time. They were certainly not worth more than the Sonora lands, which were sold by the public authorities at prices ranging from about thirteen cents an acre ($60 a sitio), as in the sale considered in *Ely's Administrator vs. United States*, 171 U. S., at page 236, down to less than four cents an acre ($15 a sitio), as in the sales considered in *Ainsa vs. United States*, 161 U. S., at page 214, and $80 a square league, as in the sale considered in *United States vs. Coe*, 170 U. S., at page 685 ($400 for five square leagues). In the first cited case (171 U. S., at page 236), it appears that the appraisers reported that the price of the sitios should be fixed as high as $60 each sitio, "because they have running water and several banks of arable land which can be made use of by cultivation," and this court, by Mr. Justice Brewer, well said (*Ib.*, page 238) that no presumption that the overplus surveyed and claimed, beyond the specific quantity bought, could be indulged from the inaction of the government or the failure of any individual to denounce the overplus, since "who there would care to question the right of a locator along a water-

way to any overplus of arid lands? Such overplus was of no value, and no third party would ever care to challenge the locator's right to this overplus, and the government, like the individual, was also indifferent."

There is, indeed, nothing "princely" in such grant holdings, any more than there is in the holdings of vastly greater tracts of the pampas of South America, and much of the eastern prejudice on the subject is ill-founded. The chief interest of the public lies in the quieting of the titles of arid areas in private ownership, so as to make them a source of public revenue under the taxing power.

8. In 1858, before the expiration of the second term of years granted to Rufus Beach by the said indenture, Gervacio Nolan died intestate (*Transcript*, fols. 84, 86, 89), leaving him surviving his widow, Maria de los Dolores, and several children, some of whom were minors. (*Ib.*, 84, 86.)

9. However, Gervacio Nolan had, on the 12th of July, 1855, filed with the surveyor general his petition for the confirmation of the said grant (*Transcript*, fol. 68), in course of which he alleges that the grant was made by the governor—

> "By virtue of the authority in him vested by the government of Mexico, as will appear by the statutes and collection of decrees of the aforesaid government, *and also by communications addressed to the aforesaid governor by the authorities of the aforesaid government of Mexico, which said communications are, or should be, deposited in the archives of this Territory*, and to which reference is made."

10. After the death of Gervacio Nolan, an

amended petition to the surveyor general was presented by his widow and children, two of whom were minors appearing by their guardian, wherein confirmation of the said grant was prayed (*Transcript*, fol. 84). The petition was subscribed by Theodore D. Wheaton, Esq., an eminent lawyer, who once held the office of United States Attorney for New Mexico.

The amended petition alleges, in positive terms,

> "That the said Armijo, during the time he was governor, as aforesaid, granted said land by virtue of the authority vested in him by the Mexican government, which authority will appear by the collection of statutes and decrees of the aforesaid government, *and also by communications addressed to the aforesaid governor by the authorities of the Mexican government, which said communications are to be found in the archives of the Territory*, and to which reference is made."

11. The authenticity and good faith of the grant and the juridical possession thereunder are established beyond cavil:

(1.) In the proceeding before Surveyor General Wilbar upon the petitions for confirmation of the grant, Pablo Delgado was examined as a witness (*Transcript*, fol. 86), and testified that he knew the signature of Manuel Armijo, and that the one shown him on document No. 1 (the petition and grant) is genuine, and that the signature of Antonio Sandoval on the same document is also genuine, and that at the date of said document Manuel Armijo was governor and commander-in-chief of New Mexico.

He further testified that he was present when the alcalde (José Baca) put Sandoval in possession

of the land, and that all the signatures to document C are genuine; also that the signature of Sandoval to document No. 3 is genuine. The documents referred to by this witness comprise our original title papers and the conveyance to Gervacio Nolan, which appear in the transcript at folios 70 to 83. His further testimony shows the death of Nolan and identifies the widow and issue.

(2.) Surveyor General Proudfit, before whom the proceeding was finally completed, says in his decision (*Transcript*, fol. 89), dated January 4, 1873, that "the original documents in Spanish, *which are genuine beyond all doubt*, show that the grant was made by Manuel Armijo, then the lawful and recognized governor of New Mexico under the Republic of Mexico, on the seventh December, 1845, to Antonio Sandoval, in accordance with Sandoval's petition of fifth December, 1845," that "on fifteenth December, 1845, Sandoval was duly placed in possession of the property by José Baca, a justice of the peace, and he and his legal representatives have so remained, it is believed, to this time, without dispute or question," that "the boundary calls are well-known natural objects and the location is certain," and that "on eighth July, 1848, Sandoval deeded the property to Gervacio Nolan, who was his nephew."

He adds: "I am of opinion that this title is perfect in the legal representatives of Gervacio Nolan, deceased, and recommend that it be confirmed by Congress accordingly."

(3.) Pablo Delgado, who testified in person before the surveyor general, was one of the attending witnesses who were present at the livery of seisin and subscribed the original act of juridical possession (*Transcript*, fol. 73), the fifteenth of December,

1845. He belonged to a Mexican family then, and always since, of most respectable standing in the community. He was the uncle of our witness, Francisco Delgado, a gentleman of the highest character, now, and for a long time, employed in the office of the United States Attorney for the Court of Private Land Claims (*Ib.*, fols. 44, 45). Francisco Delgado, proved that Pablo Delgado died about 1871, and that Pablo Delgado's first wife was a daughter of Gervacio Nolan, by whom Delgado had two daughters, who are among the grantors of the appellant Whitney.

(4.) William M. Tipton, another witness called by us on the trial, is a special agent of the Court of Private Land Claims, detailed for service in the office of the United States Attorney for that court. He testified (*Transcript*, fol. 42) that he is familiar with the signatures of Manuel Armijo and Antonio Sandoval, and he gives it as his opinion that the signature of Manuel Armijo on the granting decree, and the signatures of Antonio Sandoval on the petition for the grant and on the conveyance to Gervacio Nolan are all genuine. Mr. Tipton adds that, according to such information as he had derived from the archives of New Mexico and from conversation with people in the Territory, Antonio Sandoval was at one time "a man of great prominence and considerable wealth in New Mexico, and at one period he was a prefect." Concluding, Mr. Tipton says: "He lived, I think, until early in the '60's, if I remember rightly, according to some documents I saw at Barelas, and at the time of his death left a very large estate, for those times, the probate of which is in the records of Bernalillo county."

(5.) In litigation in the Court of Private Land

Claims, and in this court on appeal, the government, without conceding the validity of our title, has given sanction to our claim of its authenticity and good faith by invoking the action of the Mexican officials in creating it as persuasive evidence to show that, notwithstanding the incipient Spanish proceedings towards a grant of certain lands to Bartolomé Baca, those proceedings were abandoned and treated as nugatory, and the affected premises were accordingly recognized as vacant public domain before the year 1845, because grants before and since that year, including ours, were in part carved out of these lands. Indeed, our grant is almost wholly composed of the excess which the alcalde who put Baca in possession under his incipient claim, irregularly undertook to add to the area for which Baca had petitioned the acting Spanish governor, Melgares. (*Vide Bergere vs. United States*, 168 U. S. 66, and the record and briefs in that case.)

Perhaps the crude characterization of the lands in Sandoval's petition as being vacant, and "in a condition of *mortmain (á manos muertas)*," was induced by the fact that they were abandoned lands.

(6.) While, in view of the *possessio pedis* created by the delivery of juridical possession (a judicial act of great import and solemnity under the Spanish and Mexican law, as demonstrated by this court in *Ainsa vs. United States*, 161 U. S., at pages 230 to 233, and many other cases), and the uncontradicted and unsuspicious chain of facts and circumstances which establish the authenticity and good faith of our just title (*"justo titulo adquirido"*), it was an act of supererogation for us to invoke the notorious fact that the Mexican archives were despoiled on several occasions, and especially by high

federal officers, such as Governor Pile, we nevertheless proved by Mr. Tipton (*Transcript*, fols. 41, 46) that, although he had been connected with the surveyor general's office in New Mexico for the greater part of sixteen years, since the spring of 1876, and ever since then in the office of the United States Attorney for the Court of Private Land Claims, he had never seen in the archives of the government any record by Armijo, or by his secretary, of the grants made by him or signed by him; that, if such record existed in the archives during his said official employment, he would probably have encountered it in his examination of the archives; that he knew nothing about the condition of the archives, prior to the spring of 1876, of his own knowledge, except that a record book, commonly known as book letter B, had disappeared about 1879 or 1880, and, so far as he knew, had never been returned (*Ib.*, fols. 47, 50); that he could not answer positively that he had ever examined that book enough to tell of its general character (*Ib.*, fol. 47); that he "understood that it was a book which had been kept after the acquisition of this Territory by the United States, in which documents in relation to lands were recorded, in compliance with some provision of what was known as the Kearny Code, which required persons to present their documents to land to the recorder to have them copied in books and preserved" (*Ib.*); that he could not give the dates covered by that book B (*Ib.*, 50); that he had "heard it stated that some documents belonging to the archives of the Territory were destroyed in the year 1837, at the time of the revolution which resulted in the death of General Perez, who was then the governor of New Mexico," and had "also heard it stated that

during the administration of Governor Pile, who was governor somewhere about 1870, some of the archives of the Territory were destroyed by fire and some were sold to different persons and scattered about the town" (*Ib.*, fol. 48); that during the time of his connection with the office of surveyor general one book (letter C) was restored to that office (*Ib.*, fols. 48, 50); that it pertains to land grants and other documents affecting land titles; that, on investigation, the conclusion was arrived at that book letter C "had probably been disposed of by Governor Pile at the time he disposed of other papers belonging to the Territory" (*Ib.*, fol. 49); that "it was a book in which documents in regard to land were recorded," and the same kind of book, he understood, as the one that disappeared years ago from the surveyor general's office, and which had not been recovered (*Ib.*, fol. 49); that he had no recollection of ever having seen any other papers affecting the title of the Estancia grant than those produced on the trial, and, to the best of his knowledge, there are none (*Ib.*, fol. 49); and that he had never seen the "government book" referred to in old Spanish grants as containing notes of grants made, and he did not believe it to be in the archives of the surveyor general (*Ib.*, fol. 56). He further testified (*Ib.*, fols. 51, 52, 53) concerning a book called Vigil Indexes, believed to have been prepared, under the American provisional government, prior to 1851, by Antonio B. Vigil and Domingo Fernandez, under the direction of Donaciano Vigil, who at that time was secretary of New Mexico, and had charge of the archives and all papers. Mr. Tipton judged, "from having examined the index, it would be impossible to tell" how many documents the index purports to contain,

and he added that "there are certain documents that are described as being marked with certain numbers, and from the description of them it is evident that the one number applied to a large number of papers, or more than one paper, at any rate, to which the same number was given;" that, as to the character of the documents, as a rule, contained in these bundles, in some cases the description is perfectly plain; in others it is not. Certain cases simply state on the back so and so, containing documents in relation to such and such matter, not stating how many documents; that he had gone over the index in a general way—gone over that portion referring to grants a number of times; that, as to the number of "numbers or bundles" contained in that index, he could not tell "without a very careful examination, on account of the peculiar numbering;" that the first impression he got of it was "that there were ten or twelve thousand different numbered papers, but upon examining it very critically" he came to the conclusion there were less than that; that "the numbering is not consecutive through the book;" that "it would require a very critical examination to form an accurate opinion about that;" that he could not state positively that he ever discovered anything referring to the existence in the archives of a record or paper in relation to the Estancia grant; that he did not remember that he had; that it had been a long time since he had examined the book, and then it was not with a view to that particular case, so that he could not state positively; that he could only do that by going over that portion of the index that refers to grants; that there are probably five or six hundred entries in reference to grants; that in the office of the surveyor general there are numerous grants that

Governor Armijo made—not only entries in books bound together, but original documents left in the archives, purporting on their faces to be original grants of land, distinguishing between documents filed there from private hands and documents that have always been in the archives, so far as the records show; that he did "not have reference to documents that have been produced from private hands and filed by them in various cases," but to those "that constitute the archives proper;" that he had "never seen a record, in the sense of a book, containing grants, or memoranda of grants, made by Governor Armijo, but as to whether there are any grants purporting to have been made by him among these papers which are called archives, in the surveyor general's office, in distinction from private land claims filed there," he was not perfectly certain, although he did not recollect ever having seen any such; that, if there were such a document among the archives, it is possible he "might have seen it and forgotten it;" that he had seen several books "containing entries of Armijo's official acts as governor;" that his impression was that they were in the Territorial library; that he knew there were some there; that he did not remember "whether any of them cover the period of 1845 and the period of 1846;" that, according to the custom of the office, if a grant, or act of possession, or other such paper, had been committed to the custody of the Government under the terms of the Kearny Code, prior to 1854, and remained in such custody, that document, although coming from private custody prior to 1854, would now be regarded as an archive of the Government (*Ib.*, fol. 58); that he could not state whether or not the Vigil Index refers to any bound book, but that

"it does refer to many single documents and that it refers to some *legajos*, or bundles of documents, and that, in other instances, it refers to apparently what would be smaller packages than were called legajos, consisting of a number of papers referring to the same thing" *(Ib.*, fol. 58); that he did not think "it was the custom of the officers in charge of the archives, in making up the Kearny Code records to endorse upon the instruments when they were presented for record the date at which they had been filed" *(Ib.*, fol. 60); but that he thought "it was the custom, though, to endorse upon them the date upon which they were recorded." *(Ib.*, fol. 60.)

(7.) We also put in evidence *(Transcript*, fols. 61, 100) the testimony of Ira M. Bond, a witness called by the government on the trial of the Cubero case, and whose testimony, as well as other important evidence on the subject of the spoliation of the archives, is fully summarized by Mr. Justice Shiras in his opinion in *United States vs. Chaves*, 159 U. S. 452, at pages 462, 463, to all which we pray the attention of the court on this hearing.

NOTE.—Among the witnesses sworn in the Cubero case, and whose testimony is summarized by Mr. Justice Shiras, at page 462 (159 U. S.), was Mr. Tipton. The opinion states:

> "The claimants also called as a witness William M. Tipton, who had been employed for several years in the office of the surveyor general of the Territory of New Mexico, and had charge of the Spanish and Mexican archives. He testified that the books and records in that office, purporting to contain the registry of land grants made by the Spanish and Mexican governments, prior to the time the government of the

United States took charge, are in a disconnected, fragmentary form, and that one of the most important books, containing a record of grants made by the Spanish and Mexican governments, is missing, and is supposed to have been stolen. He also stated that there was not in the surveyor general's office any index of the dates, list of original expedientes, or warrants of title to Spanish and Mexican grants."

The opinion continues (page 462):

"The evidence was adduced to sustain the allegation in the petition that the governor and chief alcalde delivered to the settlers a duplicate of the granting decree and of the act of juridical possession of the chief alcalde in the premises, and placed the originals of said decree and act in the Mexican archives at Santa Fé, and that said originals, with a great part of other valuable archives of the Mexican government, although once in the custody of the United States after the treaty of Guadalupe Hidalgo, were negligently destroyed or lost."

And, at page 463:

"In view of this large body of uncontradicted evidence, we think that the court below was plainly right in finding that the claimants had satisfactorily sustained the allegations of their petition." * * *
"There is ample evidence from which to find that these settlers were put in juridical possession under a grant from the governor of New Mexico, who, under the laws then in force, had authority to make the grant."

As strong corroboration of these data on the subject of the said spoliation, we cite the following,

from the opinion of the court in *Victor de la O vs. The Pueblo of Acoma*, 1 N. M. 226, 236, decided at the January term, 1857, of the Supreme Court of New Mexico, which involved a resort to chancery to compel the surrender of a Pueblo Indian title-paper, issued by one of the viceroys of New Spain, viz.:

> "We do not deem it irrelevant to remark that the abstraction from the archives of this territory of pueblo titles at a period not very remote has become a matter of general notoriety from their nature and importance, and from their diffusion throughout the territory, and the frequent attempts at extorting money from the pueblos by means of these documents. We feel authorized to allude to the fact as one that has assumed the dignity of an historical event. Perhaps personal acts at a period when the political power of Mexico passed to the United States, in this country, and before the archives were possessed by the new power, could fully explain how the Pueblo titles became floating upon the revolution of that day."

Mr. Bandelier, the archæologist, in his published works, has several times made regretful and indignant reference to the spoliation of New Mexican archives, and Mr. Bancroft, in his work on Arizona and New Mexico (Vol. XVII of his series), says, in his bibliographical note at page 19:

> "Naturally, archive records are here as elsewhere to be regarded as the foundation of history; but in this case these records must be sought from a variety of sources, of which the archives proper—that is, the documents preserved in government keeping at Santa Fé, and cited by me as *Archivo de Sta Fé*, M. S.—are not the most fruitful or

important. The earliest records, those preceding 1680, were almost entirely destroyed in the revolt of that and the following years. The bulky accumulations of 160 later years, never adequately cared for in Spanish and Mexican times, were most shamefully neglected under U. S. rule. Hundreds of documents were lost or destroyed from time to time, until about 1870, during the rule of Governor Pile, when the remaining archives were removed from the *palacio* and sold for wrapping paper, only about one-fourth being recovered. See N. Mex. newspapers of 1870, extracts from which were published in pamphlet form as *N. Mex. Destruction of Spanish and Mexican archives in New Mexico, by United States Officials*, n. p. (1870), 8vo. 4p. After several years more of neglect and ruin, the fragments were at last gathered up, properly cared for, and roughly classified in 135 pasteboard boxes, by Judge Samuel Ellison, who has been their keeper as territorial librarian since 1881, and who has kindly afforded me every facility for consulting the treasures in his care. Thus it will be seen that the *Arch. Sta Fé*, though immensely valuable in the aggregate, and containing many important documents, is very imperfect, fragmentary, and utterly inadequate to the forming of a complete record of the country's annals in any phase. It is vastly inferior to the *Archivo de California*, so extensively cited in another volume of this series."

We respectfully request the court to peruse the entire article from which the foregoing citation is made.

In *United States vs. Wiggins*, 14 Pet. 334, the original grant in question not being in the Florida

archives, and only a certified copy being produced, the court treated the latter as *prima facie* evidence, in the absence of suspicious circumstances, and added (page 348):

> "Furthermore, the presumption that the original memorial and concession, supposed to have been on file in the government secretary's office, have been lost or destroyed, is very strong. After the papers were taken possession of in 1821 by the authorities of the United States, they were almost abandoned, in an open house, subject to the inspection and depredation of every one; many of the files were seen untied, and the papers scattered about the room; the doors and windows of the house being open. There can hardly be a doubt that some of the papers were destroyed or lost. Nothing is therefore found in the condition of the office to rebut the *prima facie* presumption furnished by the secretary's certificate, as might be the case had the papers been kept in the proper care, and especially had the concessions been numbered, and no number been missing."

12. We called on the government (*Transcript*, fol. 54) "to produce from its own custody all archives in its possession showing the acts of Manuel Armijo as governor during the year 1845, and particularly all acts pertaining to grants in which, according to the terms, Antonio Sandoval was a party or concerned;" also "to produce the commission under which Manuel Armijo was acting as governor in 1845, and also the records in its possession and commissions, concerning the office of Baca y Ortiz, as justice of the peace of the Real del Oro, at the date of the act of possession tendered in evidence;" also

"the records of grants made by authority of the supreme executive of Mexico in the year 1845, and particularly the records immediately pertaining to the grants here in question."

But the government (*Ib.*, fol. 55) was content to refer us to our statutory right to compel the production of relevant public papers.

NOTE.—By its amended answer, the government put in perfunctory denials of the petition, comptroller's certificate, grant and juridical possession (*Ib.*, fols. 30, 31), and "all material allegations not hereinbefore answered" (*Ib.*, fol. 38).

It did not even admit, unless by implication, our allegation of the spoliation of the archives or our allegation of their former contents. (*Ib.*, fols. 9, 10, 11.)

However, in view of the manifest good faith of our title, the authenticity of our papers, the delivery of juridical possession, and the absence of any suggestion of forgery, spuriousness or other fraud, coupled with the fact that the grant was made by the instrumentality of the appropriate agent of the supreme executive under the central system, the condition of the archives was not necessarily in issue, although we were desirous to have all the light shed upon our title which could possibly be shed after the lapse of more than half a century since it originated, and after the death of Antonio Sandoval and his cotemporaries.

The United States, having waived its sovereign immunity from litigation and consented to come down to the level of private citizens in a litigious contest in a court of justice, was bound on the trial

by all the usual rules of evidence (See *The Siren*, 7 Wall. 152, 154, 159). If there were in governmental custody any relevant archives, the government, "from the nature of the action," had sufficient notice to produce them (1 Gr. Ev., § 561, third case classified), and its failure to produce what, if any, it had, or to show from the archives anything, either positive or negative, to cast suspicion on our title, or tend to countervail the presumption fairly attending our "*justo titulo adquirido*" (as was always done in the California cases when the integrity of a grant title was impugned), leaves that presumption in its *prima facie* importance as a safeguard of our ancient right and possession.

Our grant is, on its face, absolute in terms, and "a just title acquired," on a most serious valuable consideration moving to the nation (*Ib.*, fol. 76), and the following customary act of possession, although probably unnecessary in the case of so complete and perfect a grant, was an *adjudication* in its support, and was expressly issued "in testimony thereof, in all time to come," to "serve him [the grantee] as formal title." (*United States vs. Pico*, 5 Wall. 536, 539, and *Malarin vs. United States*, 1 Wall. 282, 289, both cited in *Ainsa vs. United States*, 161 U. S. 230, 231.)

Such a title, when not pending in the political department, is available in the ordinary courts of the land (*Ainsa vs. New Mexico & Arizona R. R. Co.*, 175 U. S. 76, 86), and, in its maintenance against a defendant, it carries with it the same presumptive validity as a British or Spanish colonial grant (*United States vs. Peralta*, 19 How. 343, 347; *Arredondo case*, 6 Pet. 727; *The People vs. Livingston*, 8 Barb. (N. Y.)

253, at pages 277 to 281; *Bogardus vs. Trinity Church*, 3 Sand. (Ch) 633, 784).

We show below, in the course of our argument, that our title is in the same category with such colonial titles, and not in the category of titles emanating from authorities limited in their powers by the terms of specific statutes.

13. The court will notice that this cause was tried with unusual frankness and courtesy on both sides, with the joint purpose to avoid incumbering the record with unnecessary verbiage (*Transcript*, fols. 61 to 67), and to bring up sharply the comparatively new question as to the effect of the institution of the central system of government and the legislative and executive practice thereunder upon the construction of absolute titles created during that period.

Hence we did not go at length into the industrial uses of the property involved; but, if the court deems such matters important, notwithstanding its recent decisions declining to consider possession since the American occupation (*Crespin vs. United States*, 168 U. S. 208, at page 218), we offer to show that Antonio Sandoval, enjoying the actual possession into which he was judicially inducted on the fifteenth of December, 1845 (*Transcript*, fol. 78), devoted the land to ordinary ranch uses and the production of salt, so far as was consistent with his public duties during the ensuing war, up to the time that he conveyed the property to his nephew, Gervacio Nolan; that the latter, personally and through his lessee, Rufus Beach (*Ib.*, fol. 87), enjoyed the property until his death in 1858, when the title vested in his widow and children and grandchildren, some of whom were infants, and that, after the acquisition

of the property by the appellants (*Ib.*, fols. 91, 97), the latter used it extensively as a cattle ranch, under ninety miles of fence, without interference, except as to the occupation of two springs, squatted on long after the death of Gervacio Nolan, and while our title was pending before the surveyor general, and expended very large sums of money on improvements, taxes, etc. For instance, after ejecting the squatter, McAfee, about eighteen years ago, under the ruling of the New Mexico District and Supreme courts in *Whitney vs. McAfee*, 3 N. M. 37, the appellants paid the defendant liberally for his improvements and cattle.

The objections interposed by the government to a confirmation of our title may be summarized as follows:

> 1. "An objection to the introduction of the original title papers and certified copies representing them, for the reason that they are produced from private hands and do not purport to be *testimonios*, and do not show in themselves, nor has any evidence been introduced, that their attempted disposition was ever made a matter of record in the archives of the department of New Mexico, nor is there any connection shown that the archives have been lost or destroyed." (*Transcript*, fol. 45.)

NOTE.—The "original title papers" referred to have undoubtedly been in the custody of our government at least *forty-five years* last past, and they still remain in that custody. It was from that custody that we produced them on the trial. They are the same "original title papers" to which the surveyor general refers in his opinion, dated January 4, 1873,

as being "the original documents in Spanish," and as being "genuine beyond all doubt." (*Transcript*, fol. 89.) It is now impossible for us to aver whether they are the very "originals" which were deposited in the archives at the time of the grant and act of possession, or are duplicate "originals," which (according to the custom) were delivered to the grantee as evidence in the nature of letters patent. They *may* be duplicates which were handed to the grantee in December, 1845, to keep as muniments, and, being such, they *may* have been confided to the surveyor general by Gervacio Nolan when he presented his petition to that official July 12, 1855. On the other hand, they *may* be part of the archives of Armijo's time which afterwards were turned over to the "register of lands" under the Kearny Code, and recorded in the missing book "B." (*Kearny Code*, *supra*, § 4.)

The petition and grant, or the official duplicates thereof, were certainly in the hands of the magistrate at the very time and place of the livery of seisin, for he then and there exhibited them to the grantee's representative on the ground. (*Ib.*, fols. 73, 78.) It was as evidence of that livery of seisin that the magistrate executed and delivered to the grantee a duplicate of the instrument, known as the act of juridical possession. (*Ib.*) On the back of that instrument, as it remains in the custody of the government, is endorsed: "No. 2 C. File 10. Posecion de terreno para hacienda en favor del Sr. D. Antonio Sandoval. Año de 1845." And it is at the foot of that instrument that we find the words: "Registrado en el libro letra B, folio 166 y 167: lo que certifico para constancia. Santa Fé, Noviembre 17, de 1849.

"DONACIANO VIGIL [Rubrica],
"*Registrador.*"

It was equally the duty of the register of lands to make this record, whether he found the retained original of this document in the archives or received it for record from the grantee or his assign. (*Kearny Code, supra*, § 4.)

The other parts of the objection are fully answered by the evidence of destruction and loss of archives. (*United States vs. Chaves*, 159 U. S. 452.)

> 2. An objection "that the genuineness of the signature of the alcalde to the act of possession has not been established, and, in addition, the Spanish title papers, consisting of the petition of Antonio Sandoval, the marginal order or decree by Governor Armijo, and the act of possession by the alcalde, are not in the proper custody, nor is their absence from the archives and in the custody of the plaintiffs accounted for, if they ever had been in the archives."

NOTE.—It was a mere *lapsus linguæ* on the part of counsel for the government to refer to the original papers as being "in the custody of the plaintiffs." We had in our possession only a certified copy, and it was the government that, at our request, produced the originals on the trial. We expressly asked "to substitute the certified copies, which are already in evidence, so that the *originals* may be withdrawn at the convenience of the Government"—that is, returned to the surveyor general's office, whence they came for the purposes of the trial. (*Transcript*, fol. 45.)

As to the signature and office of "the alcalde"

(or, rather, *juez del paz)*, José Baca y Ortiz, they were amply proved by Pablo Delgado, one of his attending witnesses. *(Ib.*, fol. 86.) But this proof was unnecessary, in view of the ancient character of the documents. We have already sufficiently answered the remainder of this objection.

3. To lay a foundation for claiming, if the colonization law of 1824 is to be regarded as continuing operative in New Mexico under the central system, and as relevant to such a grant as ours, that Antonio Sandoval had already received gratuitous grants to the limit of his capacity to hold under that law, the government put in evidence, over our objection *(Transcript*, fols. 62, 63), certain proceedings of the territorial deputation of New Mexico in November, 1824, upon the petition of Doña Ursula Chaves, wife of Antonio Sandoval, in behalf of her absent husband, for a league of land now known as the Agua Negra grant, which resulted in a grant of the land to Antonio Sandoval by the said deputation at its session of the nineteenth of November, 1824, and the delivery of possession on the first of the month following *(Transcript*, fols. 62, 121, 127); also the proceedings for confirmation of that grant, taken before the surveyor general on a petition filed the twenty-first of October, 1856 *(Ib.*, fol. 133), which date, it will be noticed, was upwards of fifteen months subsequent to the filing before the same officer of the petition for confirmation of the Estancia grant *(Ib.*, fol. 89), and also the confirmation of the said Agua Negra grant, under the report No. 12, by act of Congress of June 21st, 1860, 12 st. 71. *(Ib.*, fol. 62);

Also, a petition filed before the surveyor general by Antonio Sandoval, by his attorney, claiming the

Bosque del Apache tract, under a grant made by Governor Armijo, dated November 24, 1845, and juridical possession delivered March 7, 1846; the report of the surveyor general thereon, July 20, 1859, and the confirmation thereof, under the report No. 35, by the said act of Congress, 12 st. 71 (*Ib.*, fols. 64, 134, 144, 145);

Also, the surveys and patents of the said Agua Negra and Bosque del Apache grants, from which it appears that the latter was confirmed for more than eleven square leagues.

NOTE.—The Agua Negra grant, having emanated from the provincial deputation, after the enactment of the colonization law of 1824, and before the formulation of the regulations of 1828, was a nullity, according to the decision of this court in *Hayes vs. United States*, 170 U. S., 637. Its confirmation by our Congress in 1860, upon an *ex parte* application of those interested, could not affect the heirs or assigns of Gervacio Nolan, who had claimed the Estancia adversely ever since July 8, 1848, under Antonio Sandoval's conveyance of that date (*Transcript*, fols. 80, 82), and whose proceedings for its confirmation had been pending ever since July 12, 1855 (*Ib.*, fol. 89)

The Bosque del Apache grant was in equitable subordination to the Estancia. The proceedings for its examination and confirmation were *ex parte*, and the act of confirmation was a mere quitclaim, not intended to prejudice strangers. Although the concession bears date November 24, 1845, it required the petitioner to "present himself to the justice of the peace of Socorro, who will place the petitioner in possession and execute the proper deeds."

(*Transcript*, fol. 141.) The juridical possession was not delivered until the seventh of March, 1846 (*Ib.*, fols. 141, 142). The papers indicate that (whatever law applied) the Bosque del Apache was intended as a *gratuitous* grant in colonization, for the magistrate admonished the grantee on the ground (*Ib.*, fol. 142) that "he should comply with all the rules and regulations (reglas y estitutos) provided for other *colonists*," and the grantee acknowledged "that he was duly informed of the above conditions" [in the original (*Ib.*, fol. 138), "á lo cual estando entendido de todo lo que se le advierte"]. On the other hand, the Estancia was absolute and immediate in its terms, and for a valuable national consideration. Although dated the seventh of December, 1845, it was either then consummate *ipso facto*, or, at least, it became consummate on the fifteenth of the same month, on the delivery of juridical possession (*Ib.*, fols. 73, 78), upwards of eighty days before Antonio Sandoval became legally vested with the Bosque del Apache. Hence, neither Sandoval, nor his heirs, nor the United States, could, in face of the conveyance of the Estancia to Gervacio Nolan on the eighth of July, 1848, and the solemn terms of that conveyance, and the institution of proceedings for the confirmation of the Estancia by the filing of the petition therefor in the surveyor general's office on the twelfth of July, 1855, do anything by subsequent *ex parte* action, tending to the prejudice of the Nolan title.

So far as the *equity* of the case is concerned, Nolan had the superior equity in 1848, and our government had ample notice thereof, long before the Bosque del Apache grant had been brought to its attention.

Moreover, as we contend, the limitations of the

colonization law of 1824 did not obtain in New Mexico under the central system.

4. The final objection of the government (*Transcript*, fols. 65, 66) is that the proviso contained in an act of Congress, entitled "An act granting to the heirs of Gervacio Nolan certain lands in the Territory of Colorado," approved July 1, 1870, 16 st., 646, whereby eleven square leagues, to be carved out of a larger tract claimed, were confirmed to the said heirs, operated to divest and destroy all title to the Estancia tract.

The said *proviso* is in the following words (*Ib.*, fol. 161):

> "*Provided*, however, that, when said lands are so confirmed, surveyed and patented, they shall be held and taken as in full satisfaction of all further claims or demands against the United States."

NOTE.—The history, meaning and effect of this proviso are admirably and convincingly discussed by Hon. Frank Springer, in the language which we quote, from one of his briefs, under our "Second Point," *infra*. Manifestly, the proviso was introduced to "exclude some possible ground of misinterpretation" of the general enactment (Story, J., in *Minis vs. United States*, 15 Pet. 423, 445), lest, at some future time, it might otherwise be asserted that the confirmation of the eleven square leagues was not a final rejection of the remainder of the large area then claimed in Colorado. The restrictive effect of such a proviso is illustrated by the history of the grant known as Las Animas, which came under the consideration of Mr. Justice Brewer, when

Circuit judge, in the case of *United States vs. The Cleaveland Cattle Co.*, 33 Fed. 323. By an act of Congress, approved June 21, 1860, 12 st. 71, the Las Animas title, under its report number 17, was included in the list confirmed, but with the proviso "that the claim number 17, in the name of Cornelio Vigil and Ceran St. Vrain, shall not be confirmed for more than eleven square leagues to each of the claimants." Judge Brewer said (*Ib.*, page 327): "The fact that the act contains no express denial of the validity of the claim beyond the twenty-two leagues is immaterial. This confirmation as to part is equivalent to a denial by Congress of the balance," etc. But he added (*Ib.*, page 328): "It is doubtless true that the action of the political department is not conclusive upon the courts. It is their duty to construe treaties, to determine rights, and, if there be any vested rights of property which the political department of the government refuses to recognize, such refusal will not prevent recognition and enforcement in the courts. At the same time this action, though not conclusive, is very persuasive; it stands upon a higher plane than the mere construction by one party of his contract and of its terms." Then the learned judge proceeded to discuss the Mexican title papers involved, and to hold, precisely as Mr. Benjamin had done, in the report of the Senate committee on the claim, that the grantees had not asked for the entire area described in their petition to Governor Armijo, but for "a tract to each of them" out of that general area. See also *The Las Animas Grant Co. vs. United States*, No. 65, October term, 1900, of this court, decided December 3, 1900.

That very litigation shows what was intended to be avoided by the proviso in the Nolan case. The

claimants could either abide by the construction of their title by our government, or decline the benefits of the act of confirmation. At the same time, that enactment concerns only the land immediately under consideration. The proviso was not intended to divest their title to any property, whether government bonds, independent executory claims, or landed estate, in their possession, outside of the subject-matter of the enactment itself; nor could such an effect be constitutionally sanctioned.

It would be especially irrelevant to the office of this proviso to construe it as operating on a just title (*"justo titulo adquirido"*) vested in Antonio Sandoval at the date of the treaty.

Following are the main propositions of our argument, which we shall take up and elaborate *seriatim:*

First.—Our title papers are evidentially established.

Second.—The proviso annexed to the act of confirmation of the Nolan grant in Colorado, to the extent of eleven square leagues, must be confined in its operation to the claim which is the subject-matter of that enactment.

Third.—The numerous decisions relating to grants in California, purporting on their face to be founded on the colonization law of 1824 and the regulations of 1828, are not pertinent to the present case, because, owing either to ignorance of the law of April 4, 1837, repealing the old colonization system (*Reynolds*, p. 35), or its non-promulgation in California, or the rebellious opposition of that department to the central system, or secret instructions from the Supreme Executive, the old customs and

usages in the granting of lands continued in that jurisdiction.

Fourth.—The Estancia grant was made at a time when New Mexico was living in subjection to the central system of government, and Manuel Armijo, as Governor and Commandant General of that department, was the trusted minister and agent of the *quasi* dictatorial Supreme Executive of Mexico, and duly acted as such in making the grant in the name of the Supreme Government, and was not restricted by any prescribed rules or limitations.

FIRST POINT.

Our Title Papers Are Evidentially Established.

At first, this court approached the consideration of California titles claimed under Mexico with a generous and unsuspecting magnanimity, subjecting them only to the test of the ordinary rules of evidence, and assuming good faith rather than fraud to attend them. But this judicial confidence was rudely shocked by the discovery that Pio Pico and other corrupt persons who had held the office of governor of Upper California, under Mexico, were so base as to lend themselves, after the American occupation, and even after the proclamation of the treaty of peace, to the purposes of vile conspiracies hatched to defraud our government out of valuable parts of the newly acquired public domain, and involving the fabrication of pretended grants bearing the *actual, genuine* signatures of ex-governors and other ex-officials of Mexico, but antedated as of the very time when they had held their former Mexican offices. In face of the painful experience of abused judicial confidence in several cases in which this court and

the tribunals below had been imposed on by these abominable frauds, a resolution was adopted with a view to balk further attempts at such imposition, and this resolution found its full expression in the case of *Luco vs. United States*, 23 How. 515, wherein a pretended grant was adjudicated to be most glaringly forged and fraudulent. The Court, speaking by Mr. Justice Grier, wound up its scathing opinion in that case with the following impressive sentence (*Ib.*, page 543):

> "In conclusion, we must say that, after a careful examination of the testimony, we entertain no doubt that the title produced by the claimants is false and forged; and that, *as an inference or corollary from the facts now* brought to our *notice*, it may be received as a general rule of decision, that no grant of land purporting to have issued from *the late Government of California* should be received as genuine by the courts of the United States, unless it be found noted in the registers, or the expediente or some part of it be found on file among the archives, where other and genuine grants of the same year are found; and that, owing to the weakness of memory with regard to the dates of grants signed by them, *the testimony of the late officers of that Government* cannot be received to supply or contradict the public records, or establish a title of which there is no trace to be found in the public archives."

Search of the reports of all the California cases decided in this court, from *Fremont vs. United States*, 17 How. 541, and *United States vs. Ritchie*, *Ib.*, 224, down to *Luco vs. United States*, 23 How. 515, (including in the 18th Howard, *Reading*, p. 1, *Arguello*,

p. 539, *Cruz Cervantes*, p. 553, *Vaca*, p. 556, *Larkin*, p. 557; in the 19th Howard, *Peralta*, p. 343, *Sutherland*, p. 363; in the 20th Howard, *Cambuston*, p. 59; in the 21st Howard, *Sutter*, p. 170, *Nye*, p. 408, *Basset*, p. 412; in the 22d Howard, *Galbraith*, p. 89, *Gonzales*, p. 161, *Pacheco*, p. 225, *Garcia*, p. 274, *Hartnell*, p. 286, *Yturbide*, p. 290, *DeHaro*, p. 293, *West*, p. 315, *Teschmaker*, p. 392, *Pico*, p. 406, *Vallejo*, p. 421, *Dalton*, p. 436, *Fuentes*, p. 443; and in the 23d Howard, *Bennitz*, p. 255, *Rose*, p. 262, *Osio*, p. 273, *Noe*, p. 312, *Alviso*, p. 318, *Murphy*, p. 476, *Pico*, p. 321, *Gomez*, p. 326, *Bolton*, p. 341, *Castellero*, p. 464, *Yontz*, p. 495, *Berreysea*, p. 499) will make it clear that the *Luco* case was the first one in which the court expressly found forgery in the alleged grant papers considered, although its suspicions had been aroused in several prior cases, which, in consequence, were generally remanded for further proof.

The court had not yet declared the policy, uniformly acted on in later cases, of testing claims by the light of its judicial knowledge of the systematic frauds and fabrications prevalent in California, but had construed and examined each collection of granting documents in accordance with the evidence adduced in the particular case to which they related; always bearing in mind the honorable and magnanimous desire of the United States, in the carrying out of treaty stipulations, "to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce forfeitures, but to afford protection and security to all just rights which could have been claimed from the government they superseded." (Per Field, J., in *United States vs. Anguisola*, 1 Wall., at page 358. See, also, the observation of

Grier, J., in *United States vs. Johnson*, 1 Wall., at page 388.)

In the consideration of land titles, originating under an antecedent government, the court has always been regardful of the well-established rules of evidence fairly applicable to the subject, and has construed such titles broadly and liberally, in accord with the spirit of the treaties which protect them, and with the thought and practice of the official authorities concerned in their creation—all which is exemplified by the opinions in *United States vs. Arredondo*, 6 Pet. 691; *United States vs. Fremont*, 17 How. 560; *United States vs. Chaves*, 159 U. S. 452; *Ely's Administrator vs. United States*, 171 U. S. 220, 223, 224.

Nevertheless, and still in accord with its general purpose, the court was bound to take judicial notice of the *matter of fact*, so prominently brought to its attention in some of the California cases, that "the late officers" of the "government of California" were culpable of fraud, forgery and falsehood, in the concoction, after our treaty, of antedated grants, and were further chargeable with perjury before our tribunals in the attempt to impose those spurious instruments on our government. In view of the judicial knowledge of such facts, the court was called on, in every new case found apparently in the same category, to apply the maxim *noscitur a sociis*. In this, the court acted on the principle underlying the general rule of evidence which permits the intent and moral character of a given act, impeached for fraud, to be tested by comparison with contemporaneous like deeds of the same actor, judicially proven to be fraudulent. *1 Gr. Ev.*, § 53; *Stephens' Digest of Evidence*, 2d Am. Ed., p. 49, Part I, Ch. 111,

Art. 12; *Lincoln vs. Claflin*, 7 Wall. 132; *Butler vs. Watkins*, 13 *id.* 456, 464; *Castle vs. Bullard*, 23 How. 172, 186; *Insurance Co. vs. Armstrong*, 117 U. S. 398; *Comm. vs. Russell*, 156 Mass. 196; *People vs. Dimmick*, 107 N. Y. 13, 31.

The kind of evidence appearing in the California cases exhibited, in the language of Stephens, "facts showing system" in acts constituting a course of conduct. In *United States vs. Vallejo*, 22 How., at page 418, Attorney General Black said that that case was confirmed in the court below "before any *organized system* of fabricating land grants in California had become known," and he added: "Until the decree of the Supreme court in Cambuston's case, very little regard was paid to the evidence offered in support of private land claims, and confirmations were made without scrutiny, and sometimes against the manifest impression of the court that the claim was fabricated and false."

But these disgraceful instances of attempts to pollute the course of justice were limited in number, time, place and opportunity. They furnish a record of an abnormal and temporary social condition, and the like are not to be found in New Mexico and other districts of country where land did not tempt cupidity by its value or its scarceness. While a few easily detected forgeries may have appeared in New Mexico land titles, we believe it safe to say that not one case appears of the execution of a grant by a governor of that department after the American occupation. In California, the discovery of gold, in 1849, and the consequent inrush of an adventurous, speculative and covetous population, led to the enhancement of the value of lands along the coast and in other attractive localities, and to the temptation to create antedated,

pretended titles by the crafty use of the *genuine* signatures of corrupt ex-officials. The result was the production of many tainted titles and the generation of an atmosphere of fraud in which the courts could not administer justice without exercising the most extraordinary precautions against fraudulent imposition.

The case of *United States vs. Wiggins*, 14 Pet. 334, is illustrative of the rule applicable to title papers which are free from the blight of origin in the midst of "an organized system of fabricating land grants." In that case, it appeared that the archives had been carelessly kept and many papers had been lost, although the proof was by no means so overwhelming as in ours. No *original* paper was produced, but only a copy certified by Tomas de Aguilar, the governor's secretary. Proof was tendered by the government that Aguilar had forged other grants; yet the court said (14 Pet., at pages 347, 348): "The record shows why such vigorous exertions were made, either to reject or to destroy the force of Aguilar's certificate. The attorney for the government offered to prove by William G. Davis that Aguilar, just before the delivery of the province was made to the United States, offered to forge a grant in favor of the witness for a tract of land; and the attorney also offered to prove by William Levington that, about the same time, Aguilar offered to forge, or did actually forge, under the signature of the former governor, White, of that province, a grant of land in favor of the witness, which evidence the court rejected, and, we think, correctly. Aguilar was not introduced as a witness; but the proof offered to establish upon him forgery and fraud in other instances, so as to destroy the credit of his certificate

in this. The secretary may have been honest and faithful in the discharge of his duties in 1815, and grossly the reverse in 1821; and, although any number of frauds should be established upon him, still, if the particular act sought to be avoided be not shown to be tainted with fraud, it cannot be affected with other frauds. (4 Peters, 297.) If there had been a forgery in this instance, it is probable it would have been brought to light at the time the survey was made; the making of which is a controlling fact with this court, coming in aid of the certificate of Aguilar. For it must be admitted that if the unsupported certificate had been brought forward, and the claim for the first time set up under it, in July, 1833, eighteen years after it bears date, that it could not have furnished any foundation for a decree, or been evidence of title worthy of credit. The lapse of time, the silence of the claimant, and her failure to have presented it for confirmation, would, under the circumstances, have been conclusive objections to its credibility. But the existence of the claim in 1821 is rendered certain by the return of the surveyor general, and before the American tribunals it has been steadily pursued."

In our case we proved, by the deposition in 1861 of Pablo Delgado, of most respectable family, that he was present at the delivery of juridical possession, December 15, 1845, and that the signatures to the juridical act are authentic. (*Transcript*, fols. 86 and 44.) He was one of the attending witnesses. (Act of juridical possession, *Ib.*, fol. 73.)

As we have seen, the opinion in the Luco case was written by Mr. Justice Grier; yet that great jurist dissented in strong and eloquent terms from what he regarded as the injustice done to General

Vallejo by the technical decision in *United States vs. Vallejo*, 1 Black, 541. See page 555 *et seq.*

And Mr. Justice Wayne, in the same case, joined in the dissent, adopting the opinion of Judge McAllister (*Ib.*, page 558), although it was Mr. Justice Wayne that had written the opinion in *Fuentes vs. United States*, 22 How. 443.

In conclusion of this reference to the genesis of the California doctrine of suspicion, we have to say that, in nearly all the suspected cases there was no pretense of *juridical possession*, and they involved in general only inchoate titles, professing to have originated under the law of 1824 and the regulations of 1828, and the court, as a court of equity, in effect ruled that the hands of the original claimants were unclean, because their papers were tainted with suspicion of crime; being as astute to ferret out and denounce fraud in those cases as it was quite recently in the case of *United States vs. Ortiz*, 176 U. S. 422, 426, 427.

And yet, even while scrutinizing with jealousy all California cases arising after the discovery of the frequent frauds to which we have above referred, the court was quite solicitous to avoid wronging by a technicality any claimant whose title bore the signs of honesty and good faith, although it might be in some respects informal; just as the court, in all New Mexico cases from the Court of Private Land Claims exhibiting no circumstances of suspicion, has, to the utmost of its jurisdiction, supported Mexican titles bearing the impress of good faith, notwithstanding evidential difficulties arising from the lapse of time, the death of witnesses and the spoliation of the archives; as appears from *United States vs. Chaves*, 159 U. S. 452.

In our case, there has never been suggested even a suspicion of bad faith.

1. The encomium of Mr. Justice Grier on General Vallejo might well be applied to Prefect Sandoval. (*1 Black*, page 558.)

2. Sandoval received actual possession of the estate, under the solemn rites attending the adjudication of his title on the very ground; and that possession must be presumed to have continued. (*1 Gr. Ev.*, § 42; *Lawson Presump. Ev.*, p. 209; *Brown vs. King*, 5 Mete. 173; *Magee vs. Scott*, 9 Cush. 148; *Lewis vs. Payn*, 4 Wend. 429; *Coleman Co. vs. Rice*, 105 Ga. 163.)

3. He and his grantee, Nolan, and the heirs and assigns of the latter, have always been "open and above board," as well as diligent, in the disclosure and record of their muniments of title.

4. The surveyor general, commissioned by our government to inquire into the "origin, nature, character and extent" of our title and to report "his decision as to the validity or invalidity" of the same, solemnly, under his official oath, reported it to Congress as based on "original documents in Spanish which are *genuine beyond all doubt*." (*Transcript*, fol. 89.)

5. The government itself, under even more serious circumstances, has vouched for the genuineness of our title papers; for, as will appear by the record of the Bartolomé Baca case (*Bergere vs. United States*, 168 U. S. 66; the transcripts of which are No. 279 (15,913), filed May 23, 1895, and No. 299 (15,948), filed July 16, 1895), they were put in evidence (from the government files) in that case as "the grant and translation thereof made in 1845 to Don Antonio Sandoval, sometimes called the Estan-

cia grant." (*Bartolomé Baca Transcript*, fols. 92, 93; also 142, etc.)

This introduction in evidence was qualified—even the words "pretended grant" being employed—so as to indicate that the government's counsel intended, when the Estancia grant should come up for hearing, to reserve the right to question its operative validity. Nevertheless, it is impossible to conceive that the government would put in evidence the Estancia grant as made in 1845, to show the probability that the Bartolomé Baca pretension had no legal standing in that year, if the theory was indulged by the government that the Estancia grant was not made at its date, December 7th, 1845, and juridical possession delivered on the fifteenth of the same month.

On the contrary, the good faith of the government in the introduction of the Estancia grant papers and other grant papers of the same period from its own files, as evidence against the Baca claim, is made manifest from the following excerpt from the government's original statement and brief filed here on the argument of that case. (See pages 28 and 29 of the brief filed in Nos. 279 and 299, October term, 1896):

"ANTONIO SANDOVAL GRANT, 1845.

"On December 5, 1845, Antonio Sandoval, a very prominent man in the Territory, petitioned the governor of the Territory for a large tract of land known as the Salt Lakes tract, stating that he makes the petition because the land is vacant and in a condition of mortmain, and that it will prejudice no third party. (R., 88-89.)

"On December 7, 1845, Governor Ar-

mijo, in consideration of the services of Sandoval, which he recites, grants him the land according to the boundaries that he asks. (R., 89.)

"Then follows the certificate of Ramirez, treasurer of the department, that Sandoval had rendered services and contributed money to the government. (R., 89-90.)

"Then follows the act of possession of December 15, 1845, the delivery being made to Juan Antonio Aragon, the agent of Sandoval, of a large tract of land of between 400,000 and 500,000 acres, which conflicts very materially with the claim of Baca. R., 90.)

"The title papers in these various grants are offered for the purpose of showing that from 1829 to 1845 the various officials and official bodies of New Mexico had occasion to investigate and report whether or not the land embraced in the Baca claim as made to-day was then vacant or claimed by any one, and invariably and in every instance it was reported that the land was vacant and unclaimed, and I take it that these various actions of the officials and official bodies constitute the strongest proof possible that neither Bartolomé Baca nor his heirs or any one claiming under them ever made, during all that time, a claim to this immense tract of land. Considering such testimony in connection with the irresponsible and unreliable statements of sheep herders and *peons*, leaves little doubt as to the weight of the testimony being in favor of the contentions of the government."

In the judicial investigations and discussions of grant titles, the primary and fundamental question to be solved is that of AUTHENTICITY.

Sometimes, the owner of the land holds formal letters patent, such as are issued out of our General Land Office. If such letters are in the usual form, without serious mutilation or other suspicious indicia, they are *prima facie* evidence, available as such in controversies with the government as well as in those between private parties. If, however, such letters bear on their face a suspicious appearance, their *prima facie* value as evidence is diminished, and, it may be, to such an extent as to render them unavailable to the holder, unless by further proof, positive or circumstantial, they are corroborated sufficiently to give them *prima facie* standing. The burden of proof does not shift until, from the letters themselves, in an unsuspicious case, or from the letters plus adequate corroborative proof, in a suspicious case, *prima facie* validity appears. Once admitted as full *prima facie* evidence, the letters stand for what they purport to be, until discredited by new evidence, furnished by the contending party to the controversy.

It would never be required of the holder of letters patent, having *prima facie* validity, to produce the sovereign record out of which they are born. That burden, in case of a dispute, would fall on the party controverting the integrity of the letters. The same principle which protects to this extent the holder of letters patent affecting lands, applies for the protection of holders of letters patent affecting inventions, as well as the protection of holders of government and municipal bonds, regular on their face. In all such cases, destruction of the public archives where the records, which are the foundation of the documents having *prima facie* validity, ought normally to appear does not tend to disparage the latter, but rather to

increase their evidential efficacy. Mr. Justice Harlan discusses, in *Selma Railroad, etc., vs. United States*, 139 U. S. 560, 567, the question of the burden of proof, as between a party who has, or ought to have, the custody of the best proof and a party who has not such custody.

In many of the California cases, the grants tendered from the hands of the claimants were regular on their face (assuming that the colonization law of 1824 was operative at their apparent date), but they were defeated, because there arose, from the archives themselves and from contemporaneous frauds in similar papers, the probability that the papers tendered were fabricated after the American occupation. Such papers, under the ordinary rules of evidence, and in the absence of the special circumstances attending a certain class of California cases, would have had greater evidential strength had all the archives been destroyed, just as *e converso* a clean record of a deed, under our system of registration, might operate as effective evidence, although the original deed was a forgery, and had been destroyed, and although the forgery might have been easily provable from the deed itself, had it been existent.

It was only because sufficient proof was found in several cases that some of the late officials of California were forgers and perjurers that the court, taking judicial notice of these outrageous crimes, adopted the cautious policy finally formulated as the rule announced in the Luco case (23 How. 515), under which all grants purporting to emanate from "the late government of California" were to be held as *prima facie* suspicious, until affirmatively corroborated. They smelt of crime. They were impeached by general evidence of bad character.

But the special evil sought to be avoided by the court was the imposition on our government of antedated instruments bearing *genuine* signatures, and hence inquiry was directed to the probability or non-probability *of the execution*, on or about the apparent day of its date, of a questioned instrument. Even a "trace" of the instrument in the archives derived by us from Mexico might sometimes be sufficient to overcome this presumption of fraud and forgery. Thus, in *United States vs. Sutter*, 21 U. S. 170, 175, there was "produced from the archives a draught of a grant corresponding to that produced from the county records, except in respect to the signatures," and that fact was treated as an important aid in the corroboration of the Sutter title, which the court confirmed, notwithstanding the destruction of the "original" grant issued to the donee. The court said (page 174):

> "The first inquiry in cases like this is, has the *authenticity* of the grant been established? This was not questioned in the District court, but in this court the appellants have denounced, with much force, the evidence as insufficient to support it. The *original issued to the donee* was not produced either to the board of commissioners or the District court. To account for its non-production, two witnesses were examined, who say that a paper, purporting to be an original, and which had the appearance of authenticity, was in the possession of one of them, as the agent and attorney in fact of the claimant; that this paper was destroyed by fire with the office in which both lived in the fall of 1851. An affidavit of the claimant in another case is in the record, in which he says that the original is lost. Some months

before this fire, the paper was recorded in the county registry of deeds, and the recording clerk affords some evidence to the genuineness of the paper. It is shown that it had been exhibited in controversies before the courts of justice, and had been examined by adverse claimants and their counsel, and at other times by interested and inquiring parties," etc.

Again (at page 175):

"We agree that the rule of law which requires the best evidence *within the power or control of the party* to be produced should not be relaxed, and that the court should be satisfied that the better evidence has not been willfully destroyed nor voluntarily withheld. But the rule on the subject does not exact that the loss or destruction of the document of evidence should be proved beyond all possibility of a mistake. It only demands that a moral certainty should exist that the court has had every opportunity for examining and deciding the cause upon *the best evidence within the power or ability of the litigant.*"

The solicitude of the court to be controlled by the good faith of the claim rather than by technical requirements in respect of record evidence, is exhibited by a contrasting of this (Sutter) case with the *Osio* case (23 How. 273), where a petition and also a duplicate (unsigned) copy of claimant's alleged grant were produced from the archives. There was no juridical possession and no satisfactory evidence of non-juridical possession, however (as there was in the Sutter case), and the circumstances of the claim, taken collectively, were so extraordinary and

suspicious as even to override the favorable presumptions which must otherwise have arisen from the archive documents; these documents themselves being evidently regarded by the court as spurious and improperly on file.

SECOND POINT.

The proviso annexed to the act of confirmation of the Nolan grant in Colorado, to the extent of eleven square leagues, must be confined in its operation to the claim which is the subject-matter of that enactment.

We have already considered this proviso, briefly, in our preliminary statement *(supra)*, and we now content ourselves with the following exposition, by Hon. Frank Springer, of the law applicable in its interpretation. This clear demonstration appears in his brief filed in the Court of Private Land Claims in the Pinkerton case, relating to the Gervacio Nolan grant, reported as No. 39:

"Upon the effect of the act of July 1, 1870, confirming Claim No. 48, in Colorado, I submit the following argument:

"There are two grants in which Gervacio Nolan and his heirs were interested, namely: Private Land Claim No. 39, in New Mexico, and No. 48, in Colorado.

"No. 39, made to three grantees, Nolan, Lucero and Aragon, was reported by the surveyor general of New Mexico, July 10, 1860, approving the grant and recommending it for confirmation by Congress. This grant was made in 1845, for land situate in the present territory of New Mexico. It appears by the surveyor general's report that Nolan held the grant partly as a grantee, and partly as a purchaser from the other grantees.

"No. 48, made to Nolan alone, in 1843, for a tract of land in the present State of Colorado, was favorably reported by a succeeding surveyor general, October 8th, 1861.

"Both were duly transmitted to Congress.

"On February 10, 1863, a number of land claims were referred by the House of Representatives to the Committee on Private Land Claims, including No. 48 and No. 9, which is said to be the same as No. 39, the serial numbers, by subsequent letter of the surveyor general having been changed.

"A report was made July 1, 1868, on some of these claims, but Nos. 39 and 48 were withheld for further investigation.

"On April 23, 1870, the House Committee on Private Land Claims reported upon No. 48, recommending its confirmation to the extent of eleven leagues, and submitting a bill to that effect, which was not then passed.

"On June 14, 1870, the Senate passed a bill, No. 843, reported by its Committee on Private Land Claims, to confirm the title to lands in Colorado to the heirs of Gervacio Nolan, which was said to be the same as that reported by the House Committee. The House passed the Senate bill on June 29, 1870. It was approved July 1, 1870, and constituted the act over which the present controversy has arisen. Long debates attended the passage of the bill both in the House and Senate. Neither in these debates, nor in the report of the House Committee of April 23, 1870, which was very voluminous, nor in the bill itself, can there be found any reference to claim No. 39, in New Mexico. It was withheld for further investigation July 1, 1868, and never thereafter reported on, or alluded to in any manner, so far as can be ascertained from the records of Congress. It slumbered, like some 60 others in like situation, to await the tardy justice of the government.

"The act of July 1, 1870, was entitled 'An act to confirm the title of the heirs of Gervacio Nolan, deceased, to *certain lands in the Territory of Colo-*

rado;' and it provides that the grant made to Gervacio Nolan, approved by the surveyor general of New Mexico, October 8, 1861, and designated as No. 48, is approved to the extent of eleven square leagues. The second and third sections provide for the survey and location of the 11 leagues, within the bounds of the original grant made by the order of Cornelio Vigil to Gervacio Nolan, and for the adjustment of the claims of actual settlers. Section 4 provides for the furnishing of approved plats of such survey to the claimants or their legal representatives, which should "be evidence of title," and concludes with the proviso:

> "'*Provided, however*, that when said lands are so confirmed, surveyed, and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.'

"This *proviso* was not peculiar to this act, but was used in the same sense by Congress in confirming other grants. Act of March 3, 1869, ch. 152.

"The contention now is, 1. That by this *proviso* the act operates as a final decision or action by Congress upon Claim No. 39 in New Mexico, so as to take it out of the jurisdiction of this court; and, 2. That the acceptance of the eleven leagues within No. 48, confirmed by the act, was a release by the heirs of Nolan of their rights under grant No. 39.

"If the first of these effects is to be given, it must be found in the act itself, without reference to anything subsequently done by the parties.

"The fifth section declares that the heirs of Nolan shall select and locate their claims according to the provisions of the act, within three months after the notice of the surveys being made; and that the party failing to make such selection and location within such time should 'be deemed and held to have abandoned their claim, and their rights and equities under this act shall cease and terminate.'

"It is not disputed that Claims Nos. 48 and 39 are wholly distinct, granted at different times; upon different considerations; for property in no wise connected, but situated about two hundred miles apart; having different parties; reported separately by the surveyor general; and in a word having no connection or relation whatever, except in the one fact that the grantee in No. 48 was one of the three grantees in No. 39. It is also undisputed that Claim No. 48, as before Congress for action, was very largely in excess of 11 leagues, and that within that claim as asserted, was a large surplus beyond the quantity confirmed.

"Now, after the passage of the act of July 1, 1870, one of two things might have happened:

"1. The heirs of Nolan might have made no selection or location within three months after being notified of the surveys being made, as required in section 5 of the act. In this event, the *proviso* would not attach, but the omission or failure of the grantees to make selection would by the terms of section 5 operate as an abandonment of their claims, and their rights and equities under this act would 'cease and terminate.' This would undoubtedly constitute final action by Congress upon claim No. 48 in Colorado, and so far as legislative action could do it, would operate as an extinguishment of all claim to that grant. Will it be contended, in such case, that the claim of the grantees in No. 39, in New Mexico, would also have been extinguished? And that by the mere failure of the grantees to select under the act of July 1, 1870, the title to all the land in both grants, part of which in one or the other was private property, guaranteed by the treaty of Guadalupe Hidalgo, would have been swept from under their feet? Such an unreasonable effect could scarcely be insisted upon, and yet it must follow the construction of the act now contended for. If the act itself operated as a disapproval of Claim No. 39, such effect was absolute, and not dependent upon any further action by the claimants. It left them only No. 48,

as to which to make their election, and if they failed in doing so, as required, that too would be gone. The mere statement of this proposition carries its own refutation. It also shows that the *proviso* could not have been a decision in itself, because in one entirely possible aspect of the case it would not have operated at all.

"If, however, the effect of the act depended upon the subsequent action of the confirmees, then the assumed extinguishment of Claim No. 39 would result from the final action, not of Congress, but of the parties; which brings up the second thing that might have happened, viz:

"2. The heirs of Nolan might have selected and located the eleven leagues as provided in the act; and in that case the *proviso* in section 4 would attach. What is the effect of such a proviso? It is well understood that a proviso in a statute relates only to the subject matter of the act, and it is never held by the courts to apply to matters extraneous, or not clearly within the subject matter dealt with. In construing a law of this kind, it must be borne in mind that the rule of construction applicable to public grants, which are ordinarily to be construed most strongly in favor of the government and against the grantees, does not apply. For this can in no sense be taken to be a grant or concession by the United States, but is simply a recognition of property rights which existed before, in private individuals, as to land which never belonged to the United States.

"The question, however, as to the effect of the *proviso*, is well settled by numerous decisions of the Supreme Court of the United States.

> "'The *proviso* is generally intended to restrain the enacting clause, and to except something which would otherwise have been within it, or, in some measure, to modify the enacting clause.'
>
> *Wayman vs. Southard et al.*, 10 Wh., 30.

"'*Proviso* in deeds and laws is a limitation or exception to a grant made, or authority conferred.'

Voorhees vs. Bank of U. S., 10 Pet., 449.

"'Where the enacting clause is general in its language and objects, and a *proviso* is afterwards introduced, that *proviso* is construed strictly, and takes no case out of the enacting clause which does not fairly fall within its terms; in short, a *proviso* carves special exceptions only out of the enacting clause, and those who set up any such exception must establish it as being *within the words* as well as *within the reason* thereof.'

U. S. vs. Dickson, 15 Pet., 165.

"'The office of a *proviso*, generally, is either to except something from the enacting clause, or to qualify or restrain it generally, or to exclude some possible ground of misrepresentation of it.'

Minus vs. U. S., 15 Pet. 445.

Pearce vs. Bank, 33 Ala. 702.

Sedgwick, p. 62.

Potter's Dwarris, p. 118-120.

"The subject matter of the act of July 1, 1870, was a claim by the heirs of Nolan to a grant made to him alone, for what was stated by the committee to be over one million acres of land, situate in the State of Colorado, recommended by the surveyor general *for confirmation to the full amount*. By the act, Congress allowed and confirmed a part of this claim, amounting to 48,700 acres, and prescribed the manner in which it should be selected, surveyed and

patented. Within the claim thus confirmed as the subject matter of the act, there *remained an excess* of over 950,000 acres, which Congress refused to allow; and Congress desired, while confirming the part allowed, to preclude any further claim for the excess. Here is an evident reason for the proviso, and an ample and sufficient one, without going outside the act itself. The act is a special one, confined to a single subject, as to which it was entirely appropriate and natural that such a proviso should be made. The subject naturally called for such a proviso, and all its terms can be completely satisfied without reference to another subject.

"If the act had been intended to apply to both Nos. 48 and 39, it would have provided for a selection of the 11 leagues confirmed out of *either*, and not exclusively out of No. 48.

"Let us go a step further: The question is, whether this proviso (assuming the grant to have been accepted by the heirs of Nolan under this act) would operate as a bar to another claim by or through the heirs of Nolan, against the United States, for an entirely distinct matter, not referred to or in any way connected with the act.

"Suppose, instead of inserting a proviso of this kind, the act had required the parties, upon receiving their patents, to execute a receipt to the United States for the 11 leagues, containing a release of all further claims against the United States; and that they had accordingly signed such a paper, reciting the confirmation, selecting and patenting of 11 leagues, and declaring that they received the 11 leagues 'in full satisfaction of all further claims and demands against the United States.' This would be the strongest possible position that could be taken against the claimants.

"The act of Congress itself, if acted upon by the parties, would be nothing more than a contract. In the language of Chief Justice Marshall, such an act 'is a contract, and although the state is a party

to it, ought to be construed according to those well established principles which regulate contracts generally.'

Huidekoper's Lessees vs. Douglas, 4 Dallas, 398; 3 Cranch, 1.

"I therefore suppose the act to be reduced to the form of an express contract of release, which embraces in the strongest conceivable manner everything that could be implied from the act, if acted upon to the fullest extent. Such a contract of release, executed in regard to Claim No. 48, would not operate upon Claim No. 39 in any respect whatever; and this proposition is sustained by an unbroken line of the highest authorities in England and America.

"The rule of construction of such instruments is laid down by Story in his work on Contracts (3d Ed.), Sec. 643, as follows:

> "'Where the words in a release are general, and unconnected with any recital, by which they may be limited, they must be taken most strongly against the releasor. *But if there be any recital of a particular claim, followed by general words of release*, the general words will be qualified and restrained by the particular recital.'

"He gives as an example from an old English case, that—

> "'If a man receives ten pounds and give a receipt therefor, acquitting and releasing the debtor of that debt, and of all other debts, actions, duties and demands, nothing is released but the ten pounds; because the last words must be limited by those foregoing.'

"He cites Bacon Abr., Release, F., where the rule is stated in this way:

> " ' But herein the sure rule and distinction seems to be that where there are general words all alone in a deed of release, they shall be taken more strongly against the releasor; but where there is a *particular recital* in a deed, and then general words follow, the general words shall be *qualified by the particular recital.*'

"A large number of authorities, in support of this doctrine, are referred to by Story in the notes to section 643, and he says in note 2: '*It is the settled law undoubtedly of England and of this country.*'

"Every writer on contracts before and since Story's time, has stated the same rule.

> Chitty on Contracts (10th Am. Ed.), 859.
>
> Addison on Contracts (3d Am. Ed.), Sec. 368.
>
> 2 Parsons on Contracts (5th Ed.), 501.

"In Pollock's work on Principles of Contracts (1st Am. Ed.), 442, the doctrine is stated in this way:

> " ' The principle is well established that the general words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time when the release was given.'

"The decided cases in the American courts apply the foregoing doctrine to almost every species of transaction.

"*Lyman vs. Clark*, 9 Mass. 235, was a case where the releasor had a claim against the estate of a testator for $25 as a distributive share and $50 as a legacy. On receiving $25 she signed a receipt to the executor for that amount as her proportion of the estate, and in express terms acquitted and discharged

the executor 'from all demands we have or may have on him by virtue of the said Caleb's last will.' It was held that this was not a release of the legacy, and that she could recover it, notwithstanding the receipt.

"*Rich vs. Low*, 18 Pick, 322, is still stronger. An insolvent debtor made an assignment of his property for the benefit of creditors, *pro rata*, provided they became parties to the assignment within thirty-five days. A schedule of the property and list of creditors follow, then an acceptance by the assignees, and at the end of the deed of assignment appeared the following:

> "'And the creditors of the said John Erskine, etc., in consideration of the covenants contained in the foregoing deed of assignment, do severally accept said assignment and approve of the terms and conditions thereof, and in condition thereof they do severally release and discharge the said John Erskine, etc., of and from *all and singular their several claims and demands against them, of every name and nature.*'

"This release was duly executed by the creditors, including one who held a mortgage on some of the scheduled property.

"It was claimed that by this acceptance and release the mortgage was released; and it would require but little change in the statement of this case to convert it into that of the Nolan claim.

"The court, Shaw, C. J., delivering the opinion, held that the mortgage was not released, saying:

> "'It is now a general rule in construing releases * * * that general words, *though the most broad and comprehensive*, are to be limited to particular demands, where it manifestly appears, by the consideration, by the recital, by the nature and circumstances

> of the several demands, to one or more of which it is proposed to apply the release, that it was so intended to be limited by the parties.'

"In *Averill vs. Lyman*, 18 Pick. 346, a very similar question arose under an assignment, acceptance and release, like that in the last case. The release by the creditors was of '*all sums of money due and owing or to become due* to them respectively from the said Charles Lyman; *also all their respective claims and demands whatsoever*.' It was held that this did not release a promissory note not mentioned in the schedule.

"The language above quoted from Story on Contracts was adopted by the Supreme Court of Pennsylvania in *Lawman vs. Young*, 31 Pa. St. 309, saying:

> "'This is common sense, for why particularize, if the matter is to be controlled by a general provision?"

"In *Munroe vs. Alaire*, 2 Cairns Rep. 337, Kent, C. J., delivering the opinion of the Supreme Court of New York, applied the same doctrine to the case of an award given on a matter in dispute, followed by a general release, holding that the release only affected the matter submitted.

"In *Jackson vs. Stackhouse*, 1 Cowen, 122, it was held that a release of a judgment for interest on a bond secured by mortgage, 'and also *in full of all debts, demands, judgments, executions and accounts of whatsoever nature to this date, either in law or equity*,' did not discharge the mortgage; the court citing as well settled the rule above quoted from Bacon's Abridgment, Tit. Release, K.

"In *McIntire vs. Williamson*, 1 Edwards, Ch. 34, in a very able opinion by Vice Chancellor McCoun, on the following state of facts: Where P. M. executed a release to T. B. C., by which he acknowl-

edged to have received from the said T. B. C. a conveyance of a lot of ground described as Lot No. 184, valued at $200, *in full satisfaction and discharge of all claims and demands whatsoever*, and in consideration thereof, and of one dollar, released and discharged the said T. B. C. *of and from all claims and demands whatsoever:*—It was held that such release was to be restricted to the claims and demands which P. M. had against T. B. C. for the said lot of ground, No. 184, or to some demand of $200 which the conveyance was intended to satisfy. This case is analogous in every respect to that of the Nolan grant, and we do not see how the two can be distinguished in principle. See, also, *Jackson vs. Stevens*, 16 Johns, 109.

"The same doctrine is affirmed by the Supreme Court of Missouri, in Grumley vs. Webb, 44 Mo. 443, where a receipt had been given in the following form:

> "'Received of William G. Webb, six thousand five hundred dollars, which is in full satisfaction of a judgment recovered by me against said Webb and David S. Bigham in the St. Louis Circuit Court, and the said sum is in full satisfaction of all claims and demands I have or hold against said Bigham and Webb, or either of them, up to this date.'

"It was held, upon a review of the authorities, that such a release did not, on its face, operate to discharge a claim against Webb in another suit, at the same time pending, in the same court. The court says, in a very strong opinion by Judge Wagner, that it is the—

> "'Universally recognized doctrine that language, *however general in its form*, when used in connection with a *particular subject matter*, will be presumed to be used in subordination to that matter, and will be construed and limited accordingly.'

"It was held that it was competent to go outside of the release itself, and determine from all the facts and circumstances what the real intention of the parties was.

"The same principle was adopted in *Bigbee vs. Coombs*, 64 Mo. 530. In *Hayes vs. Wetherbee*, 60 Cal. 396, it was held that the same principle governing the effect of general words in a release, extends to grants and conveyances of land, to-wit: That the general words shall be restrained to the particular occasion; and that where in a deed a particular interest or share in a certain described parcel of land was accompanied by words granting all the right, title and estate in and to the described premises, such conveyance was operative only for the particular interest first specified, and that the general words convey nothing.

"Some of the foregoing authorities hold that the release is open to explanation as to the probable intention of the parties, deduced from the surrounding and attendant circumstances, and some that the intention must be gathered solely from the recitals of the instrument itself.

"I have stated in the outset all the circumstances leading up to the passage of the act of July 1, 1870, so that the question may be considered from either point of view, I care not which.

"The title of the act is 'An Act to confirm the title of the heirs of Gervacio Nolan, deceased, to *certain land in the Territory of Colorado*.' The *particular subject matter* of the act was Claim No. 48, in Colorado. That claim was for certain land of large extent, embraced within designated boundaries. The *particular recitals* of the act related to a confirmation of a *part* of these very lands, *less than the area claimed*, upon condition of acceptance by the claimants of *such smaller portion* within a certain time, in full satisfaction of all *further* claims and demands against the United States. There *were* 'further claims' in the particular case which formed the subject of the bill, viz: The claim to the *excess of land*

above eleven square leagues. The terms of the *proviso* can therefore be fully satisfied by reference to the *subject matter* of the act, and the *particular recitals* therein, without going outside to seek for subjects that are not mentioned. If it were intended as a disapproval of Claim No. 39, how can we explain the omission of the plain, natural and easy words to say so?

"As to No. 39, no allusion can be found, either in the act or the proceedings attendant upon its passage, or anything done under the act, to that claim, save the positive statement by the committee, July 1, 1868, that it was *withheld for further investigation*. This is the last statement to be found in the record relative to Claim No. 39; and, if this is to be taken as evidence of '*the final action of Congress upon such claim*,' then appellate courts may begin to entertain appeals from interlocutory orders, continuing causes from one term to another. If this be a final decision, then must we begin to look for the judgments and decrees of courts in the blank pages of their records, and not over the signatures of the judges. If this be final action, then must we infer action from inaction, and read the acts of our lawgivers from their silence, and not from their speech."

The construction of the proviso in question by the government and its administrative officers is corroborative of the views of Mr. Springer and ourselves.

1. The surveyor general still proceeded with the Estancia case, which had been pending in his office ever since July 12, 1855, and finally made his favorable report thereon January 4, 1873 (*Transcript*, fol. 90), about two years and six months after the enactment of the proviso. (*Ib.*, fol. 162.)

2. In the private litigation concerning the possession of two springs upon the property, the said

proviso was not treated by either court or counsel as a relevant element in the controversies.

3. In not one of the four opinions rendered in our case, in the court below, was the said proviso treated as relevant, or even mentioned.

4. The tract of land involved in this case has been sacredly reserved from sale, as subject matter *sub judice*, up to the present time, and we have expended large sums in its purchase and improvement and devoted it to extensive ranch uses, without any disturbance by the government of our enclosure or possession, and with no controversies of a private nature, save with one squatter whom we defeated, and with some claimants under the Bartolomé Baca claim, which was not filed with the surveyor general until September 13, 1878, and the character of whose possessory standing is described by Mr. Justice Peckham in the Bergere case. (168 U. S., pages 76, 77.)

THIRD POINT.

The numerous decisions relating to grants in California, purporting on their face to be founded on the colonization law of 1824 and the regulations of 1828, are not pertinent to the present case, because, owing either to ignorance of the law of April 4, 1837, repealing the old colonization system (Reynolds, p. 35), or its non-promulgation in California, or the rebellious opposition of that department to the central system, or secret instructions from the Supreme Executive, the old customs and usages in the granting of lands continued in that jurisdiction.

The Constitutive Act, under which the General

Constituent Congress was elected, was passed January 31st, 1824; that Congress, on August 18th, 1824, passed the Colonization Law of 1824, and, on October 4th, 1824, adopted the Constitution, which remained in force until the new Constitution of December 29th, 1836, was adopted.

Reynolds, page 33.

Regulations to carry into effect the provisions of the Colonization Law of 1824 were certainly formulated by the Executive *(Gobierno Supremo)*, with the aid of a commission, on November 21st, 1828, but we cannot agree with Mr. Reynolds that they were "promulgated" *(Ib.*, page 34), in any general sense, on that day; for the colonization law and regulations were not promulgated in the Territory of Lower California until February 25th, 1830, and up to that time that local government, under its customs, granted lands by virtue of a special order of the Spanish visitor, Count de José de Galvez, made for that province on August 12th, 1768. *(Hall*, § 213.)

also § 234

"October 3d, 1835, the State Legislatures were abolished and Departmental Councils (Juntas) established. Nothing is provided with reference to the territories. *This marks the beginning of the first epoch of the Central System of Government.*"

Reynolds, page 34.

"October 23d, 1835, bases for a new Constitution were adopted, which declared that the national territory should be divided into Departments, the number, extent and subdivision to be determined by a future law. It provided for the government of the

Departments, appointment of Governors, election of Departmental Councils, etc.

"December 29th, 1836, the new Constitution was adopted. It provides, among other things, that the national territory shall be divided into Departments, provides for the appointment of Governors and the election of Departmental Councils, and defines their powers.

"December 30th, 1836, the country was divided into Departments, and *New Mexico and Sonora* were made *Departments*.

"March 20th, 1837, regulations were made by Congress for the government of the Departments, and the powers and duties of the Governors and Departmental Councils were defined therein.

"April 4th, 1837, the Colonization Law and all other land laws were repealed, and the general government" [*the Supreme Executive*], "in concurrence with its Council, directed to colonize the lands of the Republic by sales, leases or mortgages, and the 11th Article of the law of April 6th, 1830, was re-enacted."

Reynolds, pages 34, 35.

We refer the court to the exhaustive opinion of Mr. Justice Murray (*Transcript*, fols. 174 to 190) as showing, according to the Anglo-Saxon mode of reasoning, that, even independently of its repealing clause, the law of April 4th, 1837, necessarily repealed the colonization law of 1824 and the regulations of 1828, by the very fact that it provided for a substitutionary system of land alienations, utterly inconsistent with the system which had existed under the prior enactment and regulations. Indeed, this court, speaking by Mr. Justice McKenna, in *United*

States vs. Coe, 170 U. S. 681, at page 696, has declared that, "by a law passed April 4, 1837, all colonization laws were certainly modified, and may be repealed."

But the growth of centralism did not stop with the adoption of the so-called constitution of 1836, and the consequent destruction of all and singular the federal states and territories, their conversion into one centralized nation, absorbing all their public lands, and exercising its political powers through co-ordinate and uniform "departments," separated and divided by geographical lines, but governed in each case by a political agent of the supreme central executive, with slight assistance from a council or "junta."

On the contrary, centralism became more or less insidiously progressive, as it always does in every country whose citizens are not heroically loyal to the principles of freedom. On September 28th, 1841, military leaders, who had been successful in a revolt, formulated the "Bases of Tacubaya." "The constitution of 1836 was abrogated thereby and provision made for the election of a Congress for the sole purpose of forming a new constitution. Meanwhile, the departmental authorities then in office were to continue, the general-in-chief, Santa Anna, was to appoint a council composed of two members from each department, which was to select a provisional chief executive, and this council was to act in place of Congress until a council to be elected by the departments should convene. Congress was dissolved." (*Reynolds*, page 36.)

> "October 9th, 1841, the Provisional Council elected Santa Anna President.
>
> "December 10th, 1841, an election was

ordered for members of the Constituent Congress provided for by the Bases of Tacubaya, and on June 10th, 1842, this Congress convened."

Reynolds, page 36.

"December 19th, 1842, the acting president, Nicolas Bravo, dissolved this congress and summoned what was called a "Council of Notables," under the seventh of the Bases of Tacubaya. This action virtually made Santa Anna dictator."

Reynolds, page 36.

The seventh of the Bases of Tacubaya above referred to reads as follows:

"Seventh. The powers of the Provisional Executive are all those necessary for the organization of all the departments of public administration."

Reynolds, pages 234, 236.

Upon these autocratic Bases of Tacubaya the Executive Power made an accelerated growth.

"June 13th, 1843, Santa Anna promulgated the new constitution called the 'Bases Organicas,' adopted by the Council of Notables, and by which he was elected President.

"The powers and duties of the Governors of Departments are defined by said Constitution, as well as those of the Departmental Assemblies."

Reynolds, pages 36, 37.

New revolutionary proceedings occurred in November and December, 1844, fomented by Paredes

against Santa Anna, the President. Congress was prevented from assembling, November 29th, 1844. "December 6th, 1844, the people and garrison of Mexico" [the city] "rebelled against the government of Santa Anna and re-established the constitution" [of 1843] "and General Herrera assumed the exercise of the executive power as President of the Council, and on December 17th, 1844, Congress removed Santa Anna from the Presidency and appointed General Herera Acting President."

Reynolds, page 37.

Nor was political trouble yet over, for "December 14th, 1845, General Paredes rebelled against the government and promulgated the Plan of San Luis Potosi. This rebellion was successful, and on January 2nd, 1846, the "General Act of the Army" was adopted by the leaders. It provided for the election of a President by a Board to be appointed by Paredes and declared the Constitution" [of 1843], "in so far as it conflicted with this Plan, of no effect.

"On the next day, Paredes was elected Acting President under this Plan."

Reynolds, page 38.

"August 4th, 1846, General Mariano Salas overthrew the government of Paredes, and on August 22nd the Constitution of 1824 was re-established and a call made for a congress to be elected under its provisions, Salas acting as President.

"*This marks the end of the first epoch of the Central System of Government.*"

Reynolds, page 38.

Then followed a more or less disturbed federal era under the restored constitution of 1824, with several modifying military "plans" and "bases," until a new central system was instituted in 1853, etc., etc.

Reynolds, page 39.

In the light of these historical facts, so well summarized by Mr. Reynolds, it is bewildering to read what Mr. Justice Nelson says in *United States vs. Vallejo*, 1 Black, at page 552, in optimistic commendation of what the majority of the court, as then constituted, understood to be the settled "constitutional" Mexican system of public land administration, as contrasted with our own, then under unjust criticism in the East. Notwithstanding the powerful dissenting arguments of Justices Grier and Wayne in that case, although erroneously based on the supposed vitality of the law of the Cortes of January 4, 1813, in total ignorance of other data now familiar, the majority opinion declares (1 Black, at page 552), as to the colonization law of 1824 and the regulations of 1828:

> "Now, the above are the only laws of the Mexican Congress passed on the subject of granting the public lands, with the exception of those relating to the missions and towns, which have no bearing upon the question. No others have been *produced on the argument*, nor have *our researches* found any, nor were any others discovered by the public agents which were authorized by this Government to inquire particularly into the subject. (See Halleck's Rep., March 1, 1849, Exec. Doc., 1st Sess. 31st Cong., p. 119; Jones' Rep., April 10, 1850, Senate Doc., 2nd Sess. 31st Cong., p. 18. See

also Calif. 3 Rep., pp. 23, 24, 25; *ib.* 37, 38; 20 How., 63; 21 *ib.*, 177; 23 *ib.*, 315; 24 *ib.*, 349.)

"The ground taken to uphold this grant *concedes* that no other power has been conferred upon the Governor by any express act of the Mexican Congress; but it is insisted that the law of 1824, and regulations of 1828, did not repeal the power, if it previously existed, to make a grant of the public lands by sale for a pecuniary consideration; and the decree of the Spanish Cortes, of January, 1813, is referred to as confirming that authority.

"But any one looking at this law will see that it provides for a very different system of disposing of these lands from that found in the Mexican law of 1824 and the regulations of 1828; and, unless specifically recognized as excepted, would necessarily be repealed as repugnant and inconsistent with the system adopted."

Again, at page 554:

"Without pursuing the inquiry further, we think it quite clear that this law [January 4, 1813] could not have been in force after the *change of government*, unless expressly recognized by the *Mexican Congress*, and not then without being first *essentially modified in its policy and purposes*," etc.

The Vallejo decision was announced at the January term, 1861, but the court, as constituted today, thirty years later, having had greater opportunities for further historical research, and been especially aided by the minute investigations made in the recent Arizona cases, and, above all, by the luminous and productive labors of Mr. Reynolds, is made well

aware that, when the California cases were considered, and even when some New Mexico titles were examined (as in *United States vs. Vigil*, 13 Wall., 449), all the justices, as well as all their forensic advisers, had utterly misunderstood the historical, political and legal changes in the government of Mexico, incident to the establishment of the dictatorial central system in displacement of the federal system of 1824.

Apply the reasoning in the Vallejo case, upon political changes, to the effect, on the colonization law of 1824 and the regulations of 1828, of the subversion of federalism by centralism, under the bases of 1835, the "Constitution" of 1836, and the Bases of Tacubaya of 1841, and the result inevitably follows, according to our legal hermeneutics, that the land system of 1824 and 1828 was subverted by the change to the central system, and never restored, unless by the restoration of the constitution of 1824 in the years 1846 and 1847.

How, then, can we explain the persistent resort by the governors of California to the terms of the colonization law of 1824 and the regulations of 1828 for guidance in the making of ordinary colonization grants during the "first epoch" of the central system?

There are several explanations, viz.:

1. Ignorance of fact as to the precise course of political movements in Mexico, owing to the difficulties of communication and to the prevalent local disturbances in California.

2. Non-promulgation in California of some of

the Mexican laws and decrees, and especially non-promulgation of the law of April 4, 1837.

That law (April 4, 1837) does not appear ever to have been mentioned in any grant proceedings in California, or to have been called to the attention of the California tribunals concerned in the consideration of private land claims under American authority, or to the attention of this court in any California case considered here on appeal. On the contrary, this court and all others concerned constantly referred, for years and years, to the "colonization law of 1824 and the regulations of 1828" as the *only laws* under which grants could be made by California governors. The law of 1837 was never even mentioned in this court until it was invoked in *Interstate Land Company vs. Maxwell Land Company*, 139 U. S. 569, where Mr. Justice Lamar (page 578) alluded to the contention of counsel that the old colonization laws "had been repealed by a law of the republic passed in 1837," four years prior to the date of the Maxwell grant; but this contention was treated as irrelevant, because the Maxwell title had been confirmed by our Congress and the alleged title of the Interstate Land Company was, at most, only a political equity unavailable forensically against that confirmation.

The next mention by this court of the law of 1837 is in the case of *United States vs. Coe*, 170 U. S. 681, 691, wherein Mr. Justice McKenna elaborately discussed some of the features of the radical changes from the federal to the central system, and intimated that the system of colonization, existing under the federal constitution, had been substantially abrogated.

Under the Spanish and Mexican law, actual pro-

mulgation of a Spanish or Mexican decree or statute, in a province or governmental department, designed to be affected thereby, was essential before it could become effective there (Escriche, "*Promulgacion*," *Gonzales vs. Ross*, 120 U. S. 605, 616), and a like rule obtained in the American colonies (*Albertson vs. Robeson*, 1 Dallas, 9); and the very fact that the old law continued to be recognized in a Spanish or Mexican province, colony or department, after its repeal by the supreme government, is evidence that promulgation of the new law had not yet been made, or else that the former law, if ever repealed, had been revived.

Gonzales vs. Ross, 120 U. S. 605, 615.
Houston vs. Robertson, 2 Texas, 1, 28.

3. Rebellious opposition of the Department of California to the central system.

As early as 1834, disputes among officials arose in California as to the "constitutional powers of national and territorial authorities" (*Bancroft's History of California*, Vol. III., pages 276, 277), and plots began (*Ib.*, p. 278). An outbreak occurred in March, 1835 (*Ib.*, p. 280). Sonorans promoted disturbances at Los Angelos (*Ib.*, p. 281. See, also, pages 282 to 296, 298, 308, 355). Foreigners were endeavoring to acquire by purchase the whole bay of San Francisco. (*Ib.*, pp. 400, 401.) Discontent continued in the following years. "The people had a strong feeling against Mexican officials, as a class, and were opposed to centralism so far as they had any political opinions." (*Ib.*, p. 421. See, also, *Ib.*, pp. 422 to 425.) For twenty-five years "there had been a feeling that California was neglected and

wronged by the home government. The Mexican republic, after the success of the revolution, did nothing to remove that feeling. The people, though enthusiastic republicans in theory, waited in vain for the benefits to be gained from republicanism. The influence of the missionaries, men of education and devoted to Spain, tended strongly to foster the sentiment of aversion to all that was Mexican—an influence that increased rather than diminished as the padres lost their temporal prestige and became prone to refer bitterly, if somewhat secretly, to olden times. The sending of convicts and *cholo* soldiers from Mexico went far to intensify provincial prejudice. The Californians came to regard themselves proudly as superior in blood and morals to those *de la otra banda*. Mexicans of little experience or ability were given commissions in the presidial companies and sent to command veterans who had grown gray in the service and believed themselves entitled to promotion," etc. (*Ib.*, p. 449.) "The result was, in 1836, a strong popular feeling, amounting almost to hatred, against the Mexicans 'of the interior,' and a belief that Mexico should furnish for California something more or something less than rulers, and laws made with no reference to the country's needs. The popular feeling was not one of disloyalty to Mexico as a nation. The Californians were far from entertaining as yet so radical an idea as that of absolute independence, but they believed that territorial interest should be consulted by the nation, and that no more Mexican officers should be sent to rule California. Alvarado, Carrillo, Castro, Pico, Vallejo, and other young Californians of the same class, the men who had for the most part supplied the *diputacion* with members, the politicians of the country,

not only shared the popular sentiment, but were disposed to utilize it for their own as for their country's interests. They were willing to furnish from their own number men to rule California and handle its scanty revenues. Even they were not yet prepared to advocate entire separation from Mexico; but they were men of some education, who had come much in contact with foreigners, and had imbibed to some extent liberal views. Some of them had become more than half convinced that Mexican ways of doing most things were not the best ways. Yet they shrewdly feared foreign influence and were disposed to be cautious. * * * The rise of centralism gave to their schemes an aspect of national patriotism; while rumors that centralism was on its last legs augured comparative success." (*Ib.*, pp. 449, 450.)

The events of succeeding years show, with their repeated political disturbances, attempts to promote local "plans" and "bases" of federal government, inconsistent with the central syetem, and resistance to the weak authority of Mexican rulers, that California, all through the "first epoch of the central system," was, in language quoted in *United States vs. Coe*, 174 U. S. 578, at page 579, "a conservative protestant against the dictatorial proceedings which gave rise to the central system," holding towards the national government an attitude of hostility similar to that of Sonora, although less pronounced and less effective.

In these circumstances, it is more than probable that the Supreme Executive of Mexico was indisposed to irritate the federal feeling of the people of California by depriving them of the local benefits of the old law of colonization, or of the old participa-

tion of the voters, through their representatives, in the administration of the public domain, and, therefore, by silence, or by secret instructions to such of the governors as were deemed loyal to centralism, permitted the terms of the old law to remain operative, with at least the force of a custom.

References to the perturbed state of California in the latter part of the first epoch of the central system are made by the court in the cases of *Fremont*, 17 How. p. 562; *Bassett*, 21 How. p. 413; *Rose*, 23 How. p. 266, and several others.

The California cases were almost all cases of grants purporting to have been made under the colonization law of 1824 and the regulations of 1828, which the officials assumed to be in force; being apparently wholly ignorant of their repeal by the law of April 4th, 1837; but, under that law and those regulations, the officials exercised only limited and specially prescribed local functions, subject to a code of procedure in part mandatory and in part directory. Hence, the non-observance of certain specified formalities in the making of such grants was from time to time commented on by our courts. Nevertheless, it was held, even as to such grants, that the mere form was not essential (*United States vs. Larkin*, 18 How. 563), that the want of a map or preliminary report did not affect their validity (*United States vs. Hornsby*, 10 Wall. 237), and that it was not necessary that the conditions of cultivation or occupation should be inserted in them (*United States vs. Yorba*, 1 Wall. 423).

But no form, or other conditions whatever, were required in grants made by the supreme executive, through his appropriate agents, under the central system. Even in our own country, many executive acts

of the last importance are evidenced only by a letter, or telegram, or even spoken word, of the competent executive authority. The president of the United States may speak as president in any part of the national jurisdiction, without regard to perfunctory form. If present in the remotest wilds of the United States, or its territorial possessions, he may stay an execution or condone a crime by his mere word of mouth, spoken at the foot of the gallows tree. One of the subscribers once saved a human life by the telegraphic order of the president, through the attorney general, transmitted from Washington to Santa Fé. In two instances, chief justices of the Supreme Court of New Mexico have been suspended from the exercise of their judicial functions by a mere telegram from Washington.

The meaning and exercise of a sovereign executive act are found in the act itself, irrespective of mere form, even in our own settled constitutional system, and such an act is all the more potent and emphatic when it emanates from a tyrant or a dictator, or his appropriate agent, whether pro-consul, minister, governor or commandant general. Executive action, when an exercise of general discretionary power, in person or through appropriate agents, is only politically examinable, while executive action, authorized only by a prescribed, limited, restrictive statute, may be judicially reviewed.

Marbury vs. Madison, 1 Cranch, 137.

FOURTH POINT.

The Estancia grant was made at a time when New Mexico was living in subjection to the central system of government; and Manuel Armijo, as Governor and Commandant General of that department, was the trusted minister and agent of the quasi dictatorial Supreme Executive of Mexico, and duly acted as such in making the grant in the name of the Supreme Government, and was not restricted by any prescribed rules or limitations.

While California, bordering on the open sea, and having good harbors, was engaged in maritime commerce, and was otherwise so attractive in her natural resources as to have drawn into her population numerous foreigners, Americans, English, French and Russians, imbued with free and adventurous notions, and, with the large and influential body of Spanish priests and missionaries already there, not in sympathy with the dictatorial proceedings in Mexico, and was, at the same time, immune from border or foreign warfare, except to a very limited extent with savages, New Mexico, on the contrary, was simply a pastoral country, with only such commerce as was transacted over the "Santa Fé trail," and her poor and humble peasants were exceedingly devoted to their rulers, no matter what the form of government. At the same time, they were enured to danger, for their homes were often invaded by the most truculent savages.

The military spirit was always stimulated by this constant danger, and it was greatly increased during their experience in border warfare with the Texans. The Supreme Executive, owing to the belligerent attitude of American colonists who had settled in

Texas, became exceedingly jealous of the United States, and apprehensive of new aggressions. New Mexico, with her lowly, but brave and patriotic, peasants, was the bulwark on which Mexico relied to withstand invasion from the north and east. New Mexico felt the first blows, dealt by Texas, and then by the United States. Foreseeing the inevitable contest with us, it was the military policy of the Supreme Executive, while keeping the frontier free from settlement by foreign colonists, to distribute lands there with a liberal hand to Mexican citizens who were conspicuous for military ability, social influence and staunch devotion to the central government. From any point of the Mexican view, it was deemed best to convert the most available public lands on, or near, the northerly and easterly frontiers into large holdings, in the private ownership of trusted Mexican favorites; for, whatever the tide of fortune, the rules of international law would protect private property, even in case of conquest. The result was the establishment of "a cordon of land grants," each of great extent, such as the Sangre de Cristo, about 1,000,000 acres; the Beaubien and Miranda (or Maxwell), nearly 2,000,000 acres; the Vigil and St. Vrain, intended to be about 4,000,000 acres, and several others, all intended to be of great extent. In such esteem was New Mexico held for her extraordinary patriotism that it was with great and eloquently expressed reluctance that Mexico consented to her inclusion in the cession made by the treaty of Guadalupe Hidalgo.

Even after the overthrow of the central system, and the restoration of the federal system of 1824, by General Salas, he issued a decree of colonization, dated December 4, 1846 (*Orozco*, p. 219), by the

45th article of which provision was made for the founding of military colonies on the *coasts* and *frontiers*, especially for impeding the irruptions of the savages.

General Armijo soon became a favorite and confidential agent of the Supreme Executive under the central system. It is said that he at first vacillated between federalism and centralism, but he decided in favor of the latter. He was made *Commandant General*, as well as Governor, of the Department of New Mexico. In the spring of 1841 a Texan invading force was fitted out under the command of General Hugh McLeod (*Bancroft's Arizona and New Mexico*, p. 320), and it reached New Mexico in September of that year. Specially warned from Mexico, General Armijo called Prefect Antonio Sandoval to the capital to act as governor, while Armijo himself set out with the presidial troops. (*Ib.*, p. 322.) He succeeded in defeating and capturing the invaders, and most of them were sent to the national capital. (*Ib.*) The news of Armijo's successes was received in Mexico with enthusiasm ("*la fausta nueva se celebró en México con salvas y repiques*"), and the *Diario*, the government journal at the capital, contained an article laudatory of these achievements of Armijo and complimentary of Santa Anna, "whose administration," it declared, "seems destined by Providence always to achieve for the country the most complete glory and the most important triumphs for assuring its nationality and independence"! (*4 México á Través de los Siglos*, p. 476.)

Armijo had been political chief of New Mexico in 1828 (*Bancroft*, *Ib.*, p. 314). During the "revolution" of 1837-8, when Governor Perez was killed and some archives lost, Armijo acted as Governor and

Commandant General and put down that petty rebellion. "In recognition of his services," he "was given the rank of colonel, and confirmed for eight years in his assumed positions of governor and commandant general." *(Ib.*, p. 319.) "In 1839, New Mexico was separated from Chihuahua and made a commandancia" *(Ib.*, p. 313), which, we understand, was a military jurisdiction.

On October 18th, 1841, Santa Anna decreed that the division and distribution of property or funds *(caudales)* of the Departmental Treasuries should be made by the intervention of the commandants general for the preferential payment of the troops, and treasuries *(oficinas de Hacienda)* were required to account to those military officials whenever required. *(4 México*, p. 476.)

By a decree of December 16th, 1841, the office of Superior Chief of the Treasury was abolished and the Commandants General were given visitatorial and superintending authority and required to "make timely reports to the *Supreme Government*," etc.

Reynolds, p. 238.

The correspondence between Armijo and the Supreme Executive must have been very extensive and important, but owing to the spoliation of the archives it is unavailable to us. Bancroft says *(Ib.*, p. 20): "M. Alphonse Pinart has a *Coleccion de Documentos sobre Nuevo Mexico*, composed of a large number of unbound original MSS., collected by himself from various sources and kindly furnished for my use. It is particularly rich in official communications between the rulers of New Mexico and the supreme authorities in Chihuahua and Mexico; and it has enabled me to fill many a gap in the country's annals."

The lamentable waste of public archives—a waste for which the sovereign custodian is responsible to such a degree as to work an equitable estoppel against self serving use of the fact of the absence of those not appearing—is the more significant when we consider that the early surveyors general spoke with confidence in their reports of the existence of communications from the Supreme Executive of Mexico to Governor Armijo, clothing the latter with extraordinary faculties in the granting of lands. For instance, Surveyor General Pelham, who was in office soon after the passage of the act of 1854, and upon whom was cast the responsibility of investigating as a federal officer many of the titles afterwards confirmed on his recommendation by the act of June 21, 1860 (including the Sangre de Cristo, the Maxwell and others of the most important, embracing millions of acres), and whose integrity, competency and judgment are not to be disparaged, stated unequivocally, in his report of the Las Animas grant (then supposed to involve 4,000,000 acres), which report bears date September 17, 1857: "At the period [1843-1844] when this grant was made the province [department] of New Mexico had just emerged from a series of revolutions and civil commotions, which had caused the general government of the republic to confer upon the governor of the province [department] extraordinary and almost absolute power in all things relating to the domestic affairs and internal government of the province [department]. Under this authority and the extraordinary powers vested in him, this grant is purported to have been made, and it is to be presumed that he acted within the scope of his authority, as it has never been contested or contradicted."

The Las Animas grant was reported as No. 17 and so recited in the said act. 12 st., p. 71.

In an opinion furnished by Hon. J. P. Benjamin *in re* The Beaubien and Miranda land grant, and dated at the Temple, January 18th, 1871, he said, as to the Senate Committee which considered the bill for the Act of June 21, 1860, and of which he was a member: "The committee had for decision a list of eighteen claims designated by numbers shown in the first section. It came to a decision upon *each claim separately*, as shown on the face of the first section. It declined to act on Nos. 2, 5, 7, 11 and 13, and they are neither rejected nor confirmed, conditionally or unconditionally. It did act on Nos. 1, 3, 4, 6, 8, 9, 10, 12, 14, 15, 16, 17 and 18, and confirmed them all. * * * It recommended that the grant 17 should be confirmed as to eleven leagues only for each claimant for the reason that the grant was on its face for *a* tract of land *in a certain locality*, and the Surveyor General had recommended the confirmation of the claim '*to the whole locality*.' The committee thought this wrong and said that in the *absence of any other guide* it would be a fair and liberal construction of the grant to allow the largest grant permitted by law to *a single colonist*."

For lack of the historical and legal information which has since been acquired on the subject of the Mexican theory and practice of government, under the central system, and, "in the absence of any other guide" than the old colonization law, which, in so many judicial decisions, had been recognized as still operative during that period in California, it was quite natural for the committee, in its effort to do justice, to resort to the provisions of that law in resolving the doubt as to the quantity of land intended

to be granted. The probability is that all the land described by the petitioners was intended to be granted, but that the petitioners blundered in the phraseology of their petition, or the translator erred.

Judge Brewer, in his opinion in the Cleaveland and Colorado Cattle Co. case, 33 Fed. 323, *supra*, said, at page 328:

> "The general rule and the ordinary limitation was understood to be eleven square leagues to each individual; and, unless there be something in the proceedings which clearly indicates the intent to grant more, that ought to be understood the limit intended."

Yet the Sangre de Cristo title, which was confirmed on the same committee's report (*Tameling case*, 93 U. S. 644), was granted on a like petition, presented to the governor, containing the very same ambiguity, but the papers before the committee contained also the grantees' petition to the magistrate for juridical possession, and, in that petition, they referred to the land "contained" in their original application as having been "granted" to them (*Ib.*, page 648); and possibly this paper (the equivalent being absent from the Las Animas case) may have induced the favorable action of the committee.

1. The "laws" (*leyes*) embraced not only the old, applicable federal, or constitutional, statutes and executive decrees, together with old applicable Spanish decrees, cedulas and royal orders, but they embraced, also, "decrees" and special orders and secret instructions of the later dictatorial Supreme Executive, which imported in their terms much of a legislative and judicial, as well as executive, charac-

ter. These were intended to declare and enforce a military as well as a civil policy. Something faintly analogous is seen in the orders of our provisional military governments of ceded districts of country. Our courts frequently refer to Mexican "decrees," indiscriminately, whether they proceeded from a so-called "Congress," or other legislative assembly, or from the Supreme Executive.

In the Arredondo case (6 Pet. pages 714, 715), the court defines "laws and ordinances," and declares that usages and customs come within the definition, saying (*Ib.*, page 715):

> "We cannot impute to congress the intention to not only authorize this court, but require it, to take jurisdiction of such a case, and to hear and determine such a claim according to the principles of justice, by such a mockery of it as would be evinced by excluding from our consideration usages and customs which are the law of every government, for no other reason than that, in referring to the laws and ordinances in the second section, congress had not enumerated all the kinds of laws and ordinances by which we should decide whether the claim would be valid if the province had remained under the dominion of Spain. We might as well exclude a *royal order* because it was not called a law. We should act on the same principle if the words of the second section were less explicit, and according to the rule establisned in *Henderson vs. Poindexter*. See 12 Wheat. 530, 540."

2. Attention to the history of Mexico, so far as its incoherent chronicles can be called history, will convince any candid mind that political changes originated, as a rule, in military centers, and nearly al-

ways in the capital; that each involved the ambitions of soldiers and the dreams of theorists; that each began with a local energy which, when not spent in a political spasm, of short duration, extended only by slow undulations to the remote parts of the country; and that, meanwhile, as is well proved by the experience of California, the old laws, ordinances, usages and customs prevailed in such far-away places, until the effectual promulgation and operation there of the newly generated political power.

So, we find in New Mexico, the genius of Santa Anna, the rhesian Napoleon of Mexico, at last pervading every nook and cranny of that department, and growing almost constantly in vigor during the centralist movements, involving the Bases of 1835 and the so-called constitution of 1836, the enactment of the colonization law of April 4, 1837, which confided the entire public domain to the discretionary disposition of the Supreme Executive, the formulation of the Bases of Tacubaya, which made Santa Anna "virtually a dictator" (*Reynolds*, p. 36), the insincere Bases of 1843, which operated always under the shadow of the more dictatorial ones of Tacubaya, the ambitious centralism of Paredes, effectual in November, 1844, but resisted to some extent by the merely local re-establishment of the centralist Bases of 1843, and again made effectual in December, 1845, by the "Plan of San Luis Potosi," even more dictatorial in terms than that of Tacubaya, and the continuance of this aggravated centralism, until its nominal overthrow by General Salas, in the midst of our war with Mexico, when "federalism" became again the shibboleth of the noble "patriots," who, in 1846, recalled their Napoleon from his voluntary exile, by the "Plan of the Citadel," formulated in a

fortress, August 4, 1846, by the "Generals, Chiefs and Officers" there assembled (*Reynolds*, p. 253), which declared (*Ib.*, p. 254):

> "All Mexicans loyal to their country, including those who are out of it, are called upon to give their services in the present national movement, to which is *very especially invited* his excellency, *the well deserving of his country*, General Antonio Lopez de Santa Anna, who is at once recognized as the General-in-Chief of all the forces that are enlisted and resolved to fight, that the Nation may recover its rights, secure its liberty and be governed by itself."

This plan, in its fourth recital, declares the Herrera congress and government and all its laws "void" and illegitimate, and denounces the administration as "composed of men, some of them addicted to the monarchy and others to the ... *'able centralism'*"! And yet, by its third article, it confers for the time being absolute power on Santa Anna, and, by its fifth article, flatters the army as "the worthy military class of a free people" and assures it attention and protection as its due. (*Ib.*, p. 255.)

From such a source, tainted with hypocrisy, came the temporary restoration of the constitution of 1824.

3. We assume that, in the light shed on the subject by Mr. Reynolds' historical researches, it will be conceded that, under the central system, all grants of public lands in New Mexico made in the name of the Supreme Government by its authorized agents were valid, without any subjection whatever to former federal restrictions.

(*Reynolds*, p. 41; *Orozco*, pp. 291, 293;

Eduardo Ruiz, Procurador General de la Nacion, in his letter appended to this brief.)

4. Even in the obscurity which dimmed the judicial vision in earlier days (admitted with dignified humility by Mr. Justice Grier, in *United States vs. Peralta*, 19 How. 343, as it had been by the great chief justice in *Soulard vs. United States*, 4 Pet. 511, 513, cited, on the same subject, by Mr. Justice Brown, in *Crespin vs. United States*, 168 U. S. 208, 212), the court was impressed with what it was able to notice of the autocratic authority of the Mexican Supreme Executive.

Take two illustrative cases:

First.—United States vs. Osio, 23 How. 273. While it is manifest from the opinion (pages 281, 282) that the court was deeply influenced by the suggestion of the government that the alleged grant considered was an antedated fabrication; nevertheless, it chose to put its decision on the ground of want of power in the governor to make it, since it appeared that it was claimed to have been issued pursuant to an *express dispatch* of the president, produced in evidence, dated at Mexico, July 20, 1838 (*Ib.*, page 277), which, however, was construed as importing in terms the necessity of *concurrent* action by both the governor and the departmental assembly. (*Ib.*, page 284.)

The court said, as to the power of the president (*Ib.*, page 283):

> "Neither side, in this controversy, disputes the authority of the Mexican President to issue the order contained in the dispatch. From its date, it appears to have been issued during the administration of

> General Anastasio Bustamente. He succeeded to the presidency, for the second time, on the nineteenth day of April, 1837, after the capture of Santa Anna in Texas, and remained in office until the sixth day of October, 1841, when he was driven from the capital by the partisans of his predecessor. * * * It cannot be doubted but that, at the date of this dispatch, the President had assumed extraordinary powers, and was, in point of fact, to a considerable extent, in the exercise of the legislative as well as the executive powers of the Government. Assuming that the dispatch was issued in pursuance of competent authority, it must be considered as conferring a *special power*, to be exercised only in the manner therein prescribed."

Second.—United States vs. Castillero, 23 How. 464.

In this case, the court believed the title papers to be free from suspicion of fraud, and confirmed the grant. Mr. Justice Clifford wrote both the opinion in this case and that in the other.

It appears that, on the same day that the dispatch mentioned in the Osio case was forwarded, "another special dispatch was sent, reserving out of the general grant [intended by the first dispatch] such island as Castillero might select."

The court said (*Ib.*, page 468) that—

> "It is obvious, from the language of the special dispatch, that it was issued subsequently to the other communication, and must be regarded as qualifying the latter, so far as their terms are repugnant."

Again (*Ib.*, page 469):

> "Emanating, as the dispatch did, from the supreme power of the nation, it operated of itself to adjudicate the title to the claimant, leaving no discretion to be exercised by the authorities of the Department. Neither the Governor, the Assembly, nor both combined, could withhold the grant, after a proper selection, without disobeying the express command of the supreme Government. Nothing therefore remained to be done, after the selection by the claimant, but to issue the title papers, and *that was the proper duty of the Governor, as executive organ of the Department.*"

The court was still ignorant of the colonization law of April 4, 1837; but it said "that dispatch bears date at a period when the President was in the exercise of extraordinary powers." (*Ib.*, page 466.)

5. The political situation of the departments under the central system bore much analogy to that of the provinces under the antecedent Spanish monarchy; but it is noticeable that the departments were higher in standing than mere colonies; for they were integral parts, each and all equal in dignity, of one consolidated empire, called at first a "Republic" and afterwards a "Nation." The central political intelligence of this nation was the Supreme Executive, and that intelligence radiated throughout the whole national jurisdiction and appeared in national deeds performed by appropriate instrumentalities. As the Supreme Executive was the head of all administration, so the departmental ministers were the hands. He was a Briareus. Under our own constitutional government, the departments to which the

secretaries are assigned respectively are departments of intellectual administration, not involving the actual corporeal political possession by them of any geographical subdivisions of our country. They are, primarily, confidential ministers of the President, but, secondarily, they may also exercise specific duties imposed upon them directly by statute. In the former capacity, they represent the President, being, in the language of Chief Justice Marshall, "political or confidential agents of the executive, merely to execute the will of the president, or rather to act in cases in which the executive possesses a constitutional or legal discretion;" and their acts in the exercise and within the limits of these primary functions are "only politically examinable." (*Marbury vs. Madison*, 1 Cranch 137, at page 166.) But, in the other capacity, their acts not being manifestations of the constitutional discretion of the President, are, like the acts of subordinate officers in general, fully subject to judicial criticism. (*Ib.*, 171.)

See, also—

U. S. vs. Black, 128 U. S. 40.
Id. vs. Schurz, *ib.* 378.

Under the Mexican central system of government, the Governor and Commandant General of a Department was as closely representative of the Supreme Executive as one of our cabinet secretaries is of the President, but the "department" of such a Governor and Commandant General involved, besides intellectual administration as the confidential minister and agent of the Supreme Executive, the actual physical political possession and civil and military

government of a prescribed area of territory. At the same time, such an office might also involve many secondary prescribed and limited functions each of the nature of "a specific duty" imposed by law.

6. Aside from what is to be necessarily implied from the very fact that such a Governor and Commandant General was naturally the appropriate departmental representative, in peace and war, of the central dictator or Supreme Executive, we find in the Bases of 1835, the "constitution" of 1836, and the Bases of 1843, not to speak of the Plan of Tacubaya and the attending "laws" or "decrees," specific provisions plainly expressive of the intimate representative and ministerial relations which the Governor and Commandant General bore to the Supreme Executive.

(1.) By the Bases of 1835 (*Reynolds*, p. 201), it was provided that "The Executive Power of the Department shall *reside in the Governors in subordination to the Supreme Executive of the Nation.*"

(2.) By the "constitution" of 1836, it was provided that "The interior government of the Departments shall be *entrusted to the Governors in subordination to the General Government*" (*Reynolds*, p. 204); that among the duties of the Governors are "*To comply with and cause to be complied with the decrees and orders of the General Government,*" and to report to the General Government (*Ib.*, p. 206); also "to watch over the officers of the Exchequer of the Department in the manner the law shall provide." (*Ib.*, p. 206.)

(3.) By the law of March 20, 1837 (*Ib.*, p. 211), it was among other things provided that the *governors* "shall be the *usual channels of communica-*

tion between the Supreme Powers of the nation and the Departmental Councils (Juntas) and between the latter and the officials of the Department." (*Ib.*, p. 215.)

(4.) By Executive Decree of April 17, 1837 (*Ib.*, p. 224), a Superior Chief of the Treasury was established in each Department, and he was to be a member of the Board of Sales, and a copy of the minutes of such Board was to be transmitted to him "for such purposes as may be necessary and to enable him to make a *report to the Supreme Government.*" He was to call or "hold" the meetings of the Board. The Departmental Treasury was to "depend immediately" on the Superior Chief. "The net proceeds of the revenues, taxes and *property*" in the Department were to go into the treasury. Apparently, public sales of departmental property might be made by the Board under the prescribed terms of this executive decree. This decree also devolved on the Superior Chief the powers formerly exercised by the Commissaries. Later the functions of this Superior Chief were devolved on the Governor, *infra.*

(5.) But by the law, or decree, of December 7, 1837 (*Ib.*, p. 230), the governor was given supervisional power over the treasury, and enjoined to "report without delay to the Supreme Government the omissions and abuses" he might observe, and was required to *preside* over the Board of Sales.

(6.) By decree of December 16, 1841 (*Reynolds*, p. 238), the office of Superior Chief of the Treasury was abolished, and the *Commandant General* made *Inspector* and *Visitor* of the Treasury in his Department, to "see that the public revenues are well and faithfully collected, ad-

ministered and disbursed, under existing laws, regulations and *other provisions*," making "timely reports" to the Supreme Government.

The purpose of this decree, which was to go into effect from the beginning of 1842 (*Ib.*, p. 238), was evidently to facilitate the preferential appropriation of departmental property and funds for military uses, according to the policy of the order of October 18, 1841, referred to in 4 *México*, *supra*, p. 476, where it is said:

> "Para que en ningún caso se careciese de lo necesario para mantener en buen pie á las tropas, el 18 de octubre dispuso Santa Anna, y así lo ordenó el ministerio de Guerra, que los *repartos* y *distribucion* de *caudales* de las *tesorerías departamentales* se hiciesen con intervención de los *comandantes generales* 'para no dar lugar á reclamos en la satisfacción de los haberes de las tropas, mediante á que éstas deben ser pagadas *con preferencia á todo empleado*.' Los comandantes generales quedaron también autorizados para *fiscalizer* la recaudación é inversión de caudales en las oficinas de Hacienda, que rendirían cuentas á dichos funcionarios militares siempre que se las pidiesen."

(7.) By the decree of February 10, 1842 (*Reynolds*, p. 239), the Boards of Sales in the several Departments were commanded to sell "temporal properties" for cash; the same being the confiscated ecclesiastical estates.

We have no evidence that any Board of Sales was ever organized in New Mexico. The land there was too poverty-stricken to command a cash market.

(8.) By the Bases of 1843 (*Reynolds*, pp. 244, 247), it was provided: "The Governors are the

only and *necessary conduct of communication with the Supreme Authorities of the Republic;*" also *(Ib.)*: "To exercise with respect to the employés of the Department the *same powers*, which power VIII of Article 87 gives to the *President of the Republic;*" also *(Ib.)*: "To see that *justice* is *promptly* administered in the Department, in the *same manner that the President of the Republic* should do so;" also *(Ib.*, p. 248): "To be the *Chief of the Public Treasury* of the Department, and to have in general the supervision which the law gives him."

7. The "extraordinary powers" attributed by the court to the Supreme Executive in the Osio and Castillero cases *(supra)*, although researches had not yet brought to the court's attention the law of April 4, 1837, with its significant recognition of the Executive power over the public domain, steadily increased in the subsequent progress toward an autocratic form of government.

(1.) The law of April 4, 1837, declared, in its first clause:

> "El gobierno, de acuerdo con el consejo, procederá á hacer efectiva la colonizacion de los terrenos que sean y deban ser de propiedad de la república por medio de ventas, infiteusis ó hipotecas, aplicando el importe (que en las primeras *no deberá bajar* de diez reales por acre) á la amortizacion de la deuda nacional contraida ó que se **contrajere, reservando siempre lo bastante para cumplimiento de lo prometido á los militares que cooperaron á la independencia,** y para los premios y concesiones que decrete el congreso á favor de las tribus ó naciones indígenas, y *de los cooperadores al restablecimiento de Tejas*," *etc.*
>
> (Galvan's *Ordenanzas* (6th Ed.), page 136).

We quote the orignal, so that the court may make a comparison between it and the translation as given in *Reynolds*, at page 224, and then determine whether or not it is correct to render the parenthetic words ("que en las primeras *no deberá bajar* de diez reales por acre"), as is there done, into the English words: "Which in the first case *shall not be less* than $1.25 per acre," instead of rendering them "which in the first case [or "first instance," or "in the most important," or whatever "*en las primeras*" actually means in English] *ought not to be* ["*deberá*" being used in an auxiliary sense to suggest the precatory, or advisory, as "should" often does in English, and not to suggest a mandate] less than ten reales per acre." Rockwell renders "en las primeras" into "in the first instance," and "no deberá bajar" into "should not be less."

His translation is adopted by the chief justice of the Court of Private Land Claims.

(See his opinion, filed December 10, 1900, and a printed copy appended to this brief.)

The learned chief justice says in his opinion:

> "Just what was the effect of the words '*in the first instance*' in the law is difficult for us to determine. The duty of construing the act, as a whole, and in its parts, devolved upon those officers whose duty it was to administer it, and their interpretation was final and conclusive, for, in Mexico, the laws which relate to the executive department *are not the subject of judicial construction*, but the executive and legislative departments are the sole judges, both of the constitutionality and effect of such laws. We know, as matter of fact, that in all the territory acquired by the United States from

> Mexico there never was a sale of land by Mexico at $1.25 per acre, or for any amount anywhere near that. Yet public lands were continually disposed of in that territory, after 1837. This circumstance affords ample evidence, to my mind, that a construction was placed upon the words of the law favorable to the disposition of lands in the remote regions of the country at a less price, and even permitting them to be granted without consideration other than that of settlement, when the real interest of the country and people would thereby be conserved."

The court will notice that the verb "*procederá*" in the first line of the original is in the indicative future, adapted to a command, and that, if a command had been meant by the parenthetic clause, the verb "*bajar*," instead of being used in the infinitive, would have been put in the future—"*bajará*"—without use of the *quasi* auxiliary "*deber.*"

Mr. Hall, in his *Mexican Law*, page 115, § 327, translates the parenthetic clause thus: "(which for the *best lands should not be less* than ten reales per acre)."

Difficulties of translation may work much mischief in legal and judicial opinions. Thus, in *Foster vs. Neilson*, 2 Pet. 253, only the English counterpart of the Treaty of Florida of 1819 was resorted to by the court, and, construing the verbs "*shall be ratified and confirmed*" in the eighth article as importing an executory political duty on our government, the court held that the grants referred to in that part of the treaty required our political confirmation before they could become complete titles. But, discovering afterwards, in the *Arredondo* case, 6 Pet. 691, 710, 734,

741, and the *Percheman* case, 7 Pet. 51, 88, 89, that the verbs in the Spanish counterpart were "*quedarán ratificadas y reconocidas*" properly translated "*shall remain ratified and confirmed*," the court overruled the former construction, on the ground that, in the interpretation of a treaty of cession, the intent of the sovereign grantor should control. (See also argument of Mr. White, 7 Pet., pages 68, 69, 70.) So, in *Ainsa vs. United States*, 161 U. S. 208, great significance was attached to the word "located" in the English counterpart of the Treaty of Mesilla; but, in the Spanish counterpart, the word appears as "*inscrita*," as to which, in a letter of Prof. Lang, of Yale University, to whom we referred the question in 1896, he confirmed our opinion that "*inscrita*" means a literary act of filing, entering or recording, and not a survey or other act of boundary marking, or boundary description.

(2.) Again, the Bases of Tacubaya entered into the body of law and the executive practice, and they were essentially dictatorial.

In the decree of March 11th, 1842 (*Reynolds*, p. 240), the 12th article declares:

> "12. Foreigners cannot acquire national or public lands in any of the Departments of the Republic, without contracting for them with the *Government*, which possesses this right *in representation of the dominion of the Mexican Nation*."

Having, by decree of December 9, 1843 (*Reynolds*, p. 250), declared that "The value of the public lands not on the frontier and not affected by any other obligation is applied to the payment of the credits caused by the redemption of copper coin,"

the Supreme Executive, by decree of December 29, 1843 (*Ib.*, p. 251), construed the former as meaning that it *mortgaged* "only a portion of the public lands equivalent in value to said debt," but reserved to the government to *indicate what lands* are to be mortgaged and to fix their value, declaring, finally, that "consequently the *government is free to dispose of the public lands for the public benefit.*"

NOTE.—This decree was issued nearly six months after the promulgation of the Bases of 1843.

(3.) The "consejo," or council, mentioned in the Act of April 4, 1837, was, of course, abolished by the new Bases of 1843, but the councillors attending the Supreme Executive were never more than mere advisers, and, so far as their advice was important, it must be presumed to have been given.

People vs. Livingston, 8 Barb. (N. Y.) 253, 279, 280.

Vanderslice vs. Hanks, 3 California, 28, at page 39.

This is one of the cases cited by the court in the *Vallejo* case, 1 Black, 541, at page 552.

8. Reconciliation of apparently conflicting theories of the powers of our departmental Secretaries, as well as Spanish and Mexican governors and commandants general, in the doing of official acts, whether civil or military, results from a due consideration of the essential differences, pointed out by this court in several cases, between acts of "political or confidential agents of the executive, merely to execute the will of the president, or rather to act in cases in which the executive possesses a constitutional or legal discretion," and acts of the same

officials purporting to be within the scope and limitations of "a specific duty" directly imposed upon *them* by law; acts of the first class being "only politically examinable," while acts of the other class fall into the category of subordinate official acts, independent of the supreme executive discretion, and are therefore subject to judicial examination in order to test their validity by their conformity or non-conformity with the prescribed law.

Marbury vs. Madison, 1 Cr. 137, 166, 170, 171.

Gaines vs. Thompson, 7 Wall. 349.

And, while political questions may be converted into judicial questions by direct legislation (*Arredondo* case, 6 Pet., pp. 711, 729), the courts, in administering such a jurisdiction, have always indulged more liberal presumptions in favor of the authority of high ministers and agents of the supreme executive than in favor of that of inferior officers, having only defined and specific non-representative functions.

When the secretaries of our governmental departments are required by acts of Congress to discharge certain specific duties expressly devolved on them by such statutes, outside of their primary functions as advisers and confidential agents of the president, they may be compelled by mandamus to discharge such duties, and their acts, within the scope of such legislation, may in other ways be condemned or approved judicially, in the light of the enactments which are their only authority to act at all in the prescribed cases.

But, when one of our secretaries exercises a dis-

cretionary function *of the president* appropriate to be transacted through such secretary's office, the very act of the secretary, although it can have no legality except what flows from the order or direction of the president, is assumed *prima facie* to have been sanctioned by executive order or consent, and it is not necessary, in any litigation involving the effect of such an act, to show in its support an actual order or ratification thereof by the president. The law of presumption controls just as much in such a case as it does in a case involving an act done, in the name of the King, by a Spanish or other colonial governor. See the *Arredondo* case, 6 Pet. 691; *People vs. Livingston*, 8 Barb. 253, 279, 280, both relating to the presumed powers of colonial governors. And, as to the presumed powers of our departmental secretaries, see—

Wilcox vs. Jackson, 13 Pet. 498.
United States vs. Eliason, 16 Pet. 291.
United States vs. Jones, 18 How. 92.
Wolsey vs. Chapman, 101 U. S. 755.
Jones vs. United States, 137 U. S. 202, 217.
Jones vs. United States, 141 U. S. 369.
Hamblin vs. West L. Co., 147 U. S. 536.
Wood vs. Beach, 156 U. S. 548, 549.
Ex parte Van Hoven, 4 Dill. 411.

In the *Wilcox case*, 13 Pet. 491, the court considered the prohibition, by the act of May 29, 1830, of pre-emption entries on land reserved from sale "by order of the president;" saying, page 513, as to the failure to prove such an order:

> "Now, although the immediate agent, in requiring this reservation, was the secretary of war, yet we feel justified in *presuming* that it was done by the approbation and direction of the president. The president speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties."

In the *Eliason* case, 16 Pet. 291, 302, the court said:

> "The secretary of war is the regular *constitutional organ* of the president for the administration of the military establishment of the nation; and rules and orders publicly promulgated through him must be received as *the acts of the executive.*"

In *Wolsey vs. Chapman*, 101 U. S. 755, the court reaffirmed the *Wilcox* case, *supra*, and said:

> "That case is conclusive of this, unless the word 'proclamation,' as used in the present statute, has a signification so different from 'order' in the other as to raise a material distinction between the two cases. We see no such intention on the part of Congress."

Then the court proceeded in the following language, which Mr. Justice Brewer incorporates in his opinion in *Wood vs. Beach*, 156 U. S. 548, at page 550:

> "A proclamation by the President, reserving lands from sale, is his official public announcement of an order to that effect. No particular form of such an announcement is necessary. It is sufficient if it has such publicity as accomplishes the end to be

attained. If the President himself had signed the order in this case, and sent it to the registers and receivers who were to act under it, as notice to them of what they were to do in respect to the sale of the public lands, we cannot doubt that the lands would have been reserved by proclamation within the meaning of the statute. Such being the case, it follows necessarily, from the decision in *Wilcox vs. Jackson*, that such an order, sent out from the appropriate executive department in the regular course of business, is the legal equivalent of the President's own order to the same effect. It was, therefore, as we think, such a proclamation by the President reserving the lands from sale as was contemplated by the act."

9. Just as the court in the *Eliason* case, 16 Pet., p. 302, declared the Secretary of War to be "the regular constitutional *organ* of the president for the administration of the military establishment of the nation," so, in the *Castillero* case, 23 How., p. 469, the court declared, with reference to the special grant considered, that the issuing of the title papers "was the proper duty of the Governor, as the *executive organ* of the Department."

Indeed, from time immemorial it was the practice, first under Spain, then under the federal system of Mexico, and again under the central system, for the alienation of public lands to be transacted through the governors as the appropriate instrumentalities. Under the central system, they were the departmental organs for the transaction of all matters of interior government, both civil and military. They were confidential agents of the Supreme Executive in matters of discretionary administration,

notwithstanding that they may have also had specific duties to perform under prescribed rules in certain cases, outside of their more lofty and dignified functions.

They were "the *only* and *necessary conduct of communication* with the Supreme Authorities of the Republic." (*Reynolds*, page 247.)

10. Enough now appears to show that, under the central system as administered in the department of New Mexico, all that was said in the Vallejo and kindred cases as to the non-applicability of the doctrine of presumed powers under a settled constitution and definite, prescribed rules of official action, has no relevancy, except in this, that the Vallejo and Cambuston cases, and others involving the same assumed premises, all admit that, in the absence of known, settled, restrictive constitutions and rules of action, the doctrine of presumption as laid down in the Arredondo and Percheman cases, as well as in *Ely's Administrator vs. United States*, 171 U. S. 220, 224, 231; also *Camou vs. United States*, 171 U. S. 277, 287, must be given at least *prima facie* weight in support of a title issued by an appropriate "constitutional organ" of the Supreme Executive.

The court, speaking by Mr. Justice Brown, in *Crespin vs. United States*, 168 U. S. 208, called attention to the obscurities and difficulties attending a study of the source and nature of Mexican official powers, and proceeded, page 212, as follows:

> "In view of this and similar difficulties, this court, as early as 1832, in *United States vs. Arredondo*, 6 Pet. 691, laid down as a *general proposition* that the grant itself was *prima facie* evidence of its own validity, and that it would be presumed to have been

regularly issued *until the contrary appeared*, or such reasons were offered for *doubting its authenticity* as were sufficient in law to rebut the legal presumption. To the same effect are *United States vs. Clarke*, 8 Pet. 436; and *United States vs. Percheman*, 7 Pet. 51; *Strother vs. Lucas*, 12 Pet. 410, 437; *Reynolds vs. West*, 1 California, 322, 326; *Jones vs. Garza*, 11 Texas, 186, 207."

What is said by the court in the *Arredondo* case, 6 Pet. 691, at pages 728, 734, 737, 746; in the *Percheman* case, 7 Pet. 51, at page 95: "Papers translated from a foreign language, respecting the transactions of foreign officers, *with whose powers and authorities we are not well acquainted*, containing uncertain and incomplete references to things well understood by the parties, but not well understood by the court, should be carefully examined before we pronounce that an officer, holding a high place of trust and confidence, has exceeded his authority;" also pages 96, 97, 98; in the *Peralta* case, 19 How. 343, where "the documentary evidence filed in support of the claim consists of a true copy *from the archives in the office of the Surveyor General of California*"; in the *Cambuston* case, 20 How. 59, at page 63; in the *Vallejo* case, 1 Black, 552; and in the *Crespin* case, 168 U. S. 212, at page 212, all proves it to be the *settled doctrine* of this court that, in the absence of contrary statutory limitations upon the functions of governors exercising the executive power in a colony or department, and being under the control of the Supreme Executive and in subordination to that authority, grants of land made by such governors within their territorial jurisdiction and purporting to be founded on national considerations and

to be issued in the name of the Supreme Government, shall be taken *prima facie* to have been competently executed; and this *a multo fortiori* when it is matter of course for such governors to make stated and frequent reports of their official doings to the Supreme Executive.

The principle of this doctrine has even been extended by this court so as to involve the presumption that a questionable act of territorial legislation reported to Congress and not disapproved, and long enforced in the Territory wherein it originated, shall be deemed to have been ratified by silence.

See *Camou vs. United States*, 171 U. S. 220, at page 277, citing and approving a like proposition in *Clinton vs. Englebrecht*, 13 Wall. 434, at page 446.

And the doctrine, as applied to the present case, gathers emphasis from the fact that the interpretation of constitutions and laws affecting the executive department of the Mexican government has always been regarded as pertaining to *executive*, and not to *judicial* jurisdiction, as is well laid down by Chief Justice Reed in his separate opinion. (See appendix.)

Therefore, our own rule as to the evidential importance of contemporary official practice in the construction of laws and official powers has peculiar application in the adjudication of controversies arising under Mexican laws.

In the circumstances in which Armijo was officially placed, his own acts evidence his authority by their inherent force as an adjudication, and the act of juridical possession adds the force of a judicial judgment.

"No court in the universe," said Chief Justice Marshall, in *Elmendorf vs. Taylor*, 10 Wheaton, 152,

"which professed to be governed by principle would, we presume, undertake to say that the courts of Great Britain or France, or any other nation, had misunderstood their own statutes, and, therefore, erect itself into a tribunal to correct such misunderstandings."

Hancock vs. McKinney, 7 Tex. p. 442.

Hardeman vs. Herbert, 11 Tex. pp. 656-660.

Cavazos vs. Trevino, 35 Tex. p. 165.

Many "rules of property" have sprung from judicial misconstruction and official and popular errors.

We have already seen that, in the construction of the Mexican law pertaining to executive powers, the executive and legislative departments of Mexico exercised *quasi* judicial functions.

Even recently, this court has intimated that a distinction must be made between presumptions attending grants made by inferior magistrates and those attending grants made by the governors under the central system; for in *Faxon vs. United States*, 171 U. S. 244, 256, 260, the learned Chief Justice said (p. 260):

> "There was a fatal want of power in the departmental treasurer to make the sale, nor was any evidence introduced to show that his action was participated in or ratified by the governor, or by the national government, in any manner. And this is not a case in which the sale and grant can be treated as validated by presumption."

11. We close this subject with a letter from a

distinguished Mexican legist, Señor Don Eduardo Ruiz, who wrote it when he was *Procurador General de la Nacion.*

The original is with the clerk of this court. We feel it to be fortunate to have this expression from an eminent lawyer of that country, especially since Señor Orozco, in his work, has apparently pretermitted all reference to the act of April 4, 1837.

The first central system was a hiatus of a decade between two epochs of the federal constitution of 1824, and it is possible that the fact that the constitution of 1824 was again in force when the subject of California titles began to be agitated in the American tribunals may have led some investigators to assume that that constitution had remained in force without interruption ever since 1824.

The following translation was made by Mr. Ernest Knaebel, and we believe it to be substantially correct.

"PRIVATE CORRESPONDENCE
of the
"ATTORNEY GENERAL
of the
"NATION.

"Mexico, March 6, 1886.

"*Emilio Pardo, Esq., Counselor at Law:*

"DEAR SIR: You desire to know my opinion relative to the Las Animas grant of lands made to Messrs. Vigil and St. Vrain by General Manuel Armijo, as Governor and Military Commandant of the Department of New Mexico, in the year 1843, during the period in which the Mexican nation was ruled by the government of a unified or central republic. I do not know the date of the grant, but if it was made while the

Bases de Organizacion of the provisional government of the republic, adopted at Tacubaya on September 28, 1841, were in force, it is clear that, in conformity with the 6th and 7th *Bases*, the Executive possessed full powers in all branches of public administration, with no other limitation than that of being responsible for his acts to the first Constitutional Congress. The governors and military commandants of the Departments were but mere agents of the Executive, and, consequently, acted under his instructions, private or public, and, in their turn, were accountable only to him in the exercise of their functions.

"If the date of the grant with which I have to deal is after June 12, 1843, then the *Bases de Organizacion politica* of the Mexican Republic were in force, which were in the nature of a constitution or organic act of the country. In them we find that the legislative power had no express authority whatever to pass upon grants of unoccupied or colonization lands, inasmuch as, in respect of these, Section 5 of Article 134 recommends the local authorities of the Department to decree whatever is convenient concerning the acquisition, alienation and exchange (permutas) of property belonging to the Department, providing, however, that, in alienations of lands, the laws in force and the requirements of the colonization laws should be observed.

"Respecting the matter before us, therefore, there existed no law, during that period, except that of April 4, 1837, which provided that the government (National Executive) should proceed to make effective the colonization of the lands of the Republic, by means of sales, emphyteuses, or hypothecs, with the reservation that it

should comply with what had been promised to the soldiers who had co-operated in obtaining national independence, or with whatever enactment Congress should make in favor of the native tribes or of those who might aid in the restoration of Texas, without being embarrassed by the prior colonization laws, which stood abolished, except in so far as they related to the introduction of slaves.

"Thus the central government stood authorized to alienate the public or unoccupied (*baldios*) lands to whatever extent it might deem convenient. The law of March 11, 1842, granted permission to foreigners to acquire and possess real property by purchase, judgment, denouncement or any other title; and, although the limitation was set that these provisions did not include the frontier or border Departments, in respect of which special colonization laws were to be promulgated, withholding this possibility of acquisition by foreigners, this prohibition was not absolute, but could be dispensed with by the Supreme Government of the Republic. Agreeably to this law, the foreigners who acquired real property in the country were considered to be, by that very fact, under the sway of the Mexican law, that is to say, impressed with the obligations and possessed of the rights of Mexicans. I call attention to this point because it will find its application further on. We must bestow particular attention upon the fact that, among the attributes of Congress, established in the Bases, that of legislating over vacant public lands does not exist, for I repeat that this power is consigned to the 6th title, which treats of the 'Government of the Departments.'

"It should not be forgotten that the

political constitutions that established the central government in Mexico, from the constitutional laws of 1836 to the *Bases Organicas* of 1842, were not, in their character, constitutions of expressly defined powers, but that, although some duties were particularized for officials, the limitations that were imposed upon them were very limited indeed, so that it may be said that such public officials were empowered to do anything that the law did not expressly prohibit them from doing, the reverse of what is now commanded by the Constitution of 1857, in conformity with the system whereof it is the citizens who possess that liberty, while the government may not do more than what the law expressly enjoins or permits it to do. And, since the alienation of unoccupied public lands and the matters relative to colonization are functions of an absolutely and solely administrative order, it follows that the government (the Executive), in which the administrative action resided, was the sole instrumentality empowered to alienate the unoccupied public lands or to make grants upon colonization, through its agents, which agents, under the *Bases Organicas* cited, the governors of the Departments were.

"Arguing on the supposition (which is, so far, not only not proven, but not even presented) that Governor Don Manuel Armijo had exceeded his instructions, or had acted without them, this, we have already said, would be only a case of responsibility, which might be exacted by the Supreme Government, and by no one else. That this is certain is sufficiently demonstrated by the character of the political institutions which governed at that time; but, aside from the provisions hereinbefore cited, and merely to

strengthen this consideration, I mention the decree of July 7, 1854, issued by the dictatorial government of Don Antonio Lopez de Santa Anna, subjecting to revision titles by alienations of vacant public lands made from 1826 to 1854, and declaring null those alienations which had been assented to by the Departments of the central system without the knowledge and approval of the General Government. A decree which could have no application to the case of Vigil and St. Vrain, because New Mexico, at that date, was already a territory of the United States, and which, furthermore, was specially abrogated by the provisional president, Don Juan Alvarez, on December 3, 1855.

"From what has hitherto been said, it follows that the Departmental governments had power to make grants of lands, and that General Armijo's government could make that in favor of Vigil and St. Vrain, of the lands called Las Animas; and it likewise follows, manifestly, that the grant under discussion was not objected to by the General Government prior to the celebration of the Treaty of Guadalupe: so that the grantees enjoyed a right of ownership, the lawfulness of which was disputed them by no one.

"But, supposing that it be desired, today, to dispute that lawfulness in opposition to the grantees, no one will doubt that the celebration of the Treaty of Guadalupe found them in possession of the granted lands—a possession undisputed since 1843.

"According to Mexican legislation, and I have reference principally to the legislation of that epoch, possession, simple holding or occupation of the *res*, conferred upon the possessor the advantage of a presumption in his favor (while the contrary re-

mained unproven) that his right was a perfect right of property; and he who, in this way, quietly and peaceably maintained his possession for the period of a year and a day was not obliged to account for his possession, for nothing more was required of him than actual possession and the intention to maintain this right to raise the presumption that he held it in good faith. It was so provided in the ~~ten~~ laws, ~~(las leyes~~ 10 , title 30, Partida 3, and in the 3rd law, title 8, Book 11 of the *Novísima Recopilacion*.

"With us, possession, juridically considered, has its origin in Roman legislation, which rated it, not merely as the consequence of a right, but as the right itself. Its foundation is that rule written in the law of the Twelve Tables, which says: 'He who possesses a thing for one or two years makes himself its owner.' So respected is this right that the possession, even supposing it to be illegal, is guaranteed to the possessor by means of compulsory (violentos) proceedings, which are the subject-matter of the Interdicts.

"Vigil and St. Vrain were at least possessors of the Las Animas lands, upon the conditions and with the advantages imposed and given by law; and only the government was entitled to recover the full right of property by means of a legal proceeding. If, instead of this being done, we find some authentic act whereby we are convinced that the government recognized and respected that possession, then it is clearly in accordance with legal principles to affirm that, by that declaration of the government, the full legal ownership of the lands which, for the sake of the argument, we have supposed

they held by right of possession, became firmly vested in Vigil and St. Vrain.

"Such an act we find solemnly authenticated in the Treaty of Guadulupe Hidalgo, ratified by the Mexican government May 30, 1848. In Article 8, it was stipulated that the Mexicans established in territories formerly belonging to Mexico might retain the property of which they were in *possession*, or dispose of it. The Treaty did not use the word ownership, because, as this article was drawn in favor of the Mexicans whom the treaty forced to change their country, at least as regarded the *situs* of their property, it sought to employ a more generic word, which might insure their rights, embracing all their property, however the nature of their enjoyment thereof might be considered elsewhere. And this, although the Mexican citizens should afterwards acquire the title and rights of citizens of the United States. We have already said that, assuming that those who possessed these lands by virtue of grants made by the Departmental governments were not Mexicans, still they should have been considered as such, so far as concerns the rights and obligations they contracted by their respective agreements, and, consequently, they are included in the declaration made in Article 8 of the Treaty of Guadalupe.

"If the annulment of grants was, as it is, an act of sovereignty, when the Mexican government did not attempt it, but rather shielded with its protection those who were about to be subjected to another sovereignty, in no way can the grantees be deprived of their rights by the government of the United States, because, if the latter government should attempt to do so, it would either be assuming the exercise of the sovereignty of

Mexico in order to annul grants made prior to the thirtieth of May, 1848, or it would be applying, in the examination of grants, American laws—which could not have been in force when the contracts were made, and which must be considered as operating retroactively, on the supposition that, for the Mexicans with whom Article 8 of the Treaty of Guadalupe has to do, they began to be in force since the promulgation of that official document—and attempting to apply such laws to cases of anterior origin: both suppositions lead us to absurd results.

"I am always, dear sir, warmly and respectfully yours,

"EDUARDO RUIZ."

Conclusion.

"Few cases presented to this court are more perplexing than those involving Mexican grants. The changes in the governing power as well as in the form of government were so frequent, there is so much indefiniteness and lack of precision in the language of the statutes and ordinances, and the modes of procedure were in so many respects essentially different from those to which we are accustomed, that it is often quite difficult to determine whether an alleged grant was made by officers who, at the time, were authorized to act for the government, and was consummated according to the forms of procedure then recognized as essential. * * * We are not to presume that, because certain officials made a grant, therefore it was the act of the Mexican government and to be sustained. It must appear that the officials did have the power, and we are not justified in *resting* upon any legal presumption of the

existence of the power from the fact of its exercise.

"While this is true, yet when the statutes and ordinances defining the powers and duties of an officer are somewhat indefinite and general in their terms, and that officer was in the habit of exercising the same power as was exercised in the case presented, and such exercise of power was not questioned by the authorities of Mexico, and grants purporting to have been made by him were never challenged, there is reason to believe that the true construction of the statutes and ordinances supports the existence of the *power*." (*Ely's Administrator vs. United States*, 171 U. S. 220, at pages 223, 224.) And a title vested before the treaty cession could not be divested arbitrarily. *Camou vs. United States*, 171 U. S. 277, 290, 291.)

The principles which underlie the ordinary law of agency apply to official acts done in an alleged representative capacity. This court has said, as to private agents, that, if an agent has been permitted for years to pursue a particular course of conduct, it will be *presumed* that he had authority so to act.

Martin vs. Webb, 110 U. S. 7, 14.

And Mr. Justice Brewer adverts to this same doctrine as suggesting a presumption in favor of official action in certain circumstances. See the *Ely* case, 171 U. S. 220, at page 232.

The doctrine does not, of course, mean that a mere pretense of agency, by an unaccredited stranger, carries a favorable presumption, but rather that, when the law and the evidence indicate fairly that a person is so related to a superior as to be in some sense immediately representative, the *scope* and *ex-*

tent of such representation may be shown by a course of dealing, and by other circumstances.

Our grant was made in evident consultation with the comptroller and treasurer of the department. (*Transcript*, fols. 77, 89.) It involved the *satisfaction* of a long standing pecuniary account between Sandoval and the nation, for it was asked in "compensation" and granted accordingly. (*Ib.*, fols. 75, 76.) The governor was directly "responsible" to the Supreme Executive, and there results "the presumption, very strong, if not irresistible, that everything preceding it had been lawfully and rightfully done." See citation by Mr. Justice Brewer, in the *Ely* case (171 U. S., at page 231), from the *Mitchel* case (9 Pet. 711, 742).

Even under the federal system, such a grant would seem to come directly within the contract provisions contained in Articles 10 and 11 of the colonization law of 1824 (*Reynolds*, page 121) for pension lands to old soldiers, and for the compromising of salaries, etc., of military and civil employés by the alienation to them of "*any* portions" of the public domain—provisions intended evidently to operate in the full measure and degree of any public duty or obligation whose discharge was intended, and therefore not to be restricted by the limitations of area provided, under a different policy, for ordinary gratuitous colonists; even which limitations, however, did not obtain in New Mexico under the central system.

While Antonio Sandoval (and consequently his grantee, Gervacio Nolan), having gone into actual possession of the granted premises under a *juridical* act, and claimed the same as an *hacienda* or cattle ranch, under a title consummate at least as early as

December 15, 1845, the date of the delivery of seisin, would have had a good legal standing even under the old law, had it been in force at that time, still it is evident that his standing was far more serious and meritorious than that of an ordinary volunteer colonist who had secured a gratuitous title for the mere asking. Sandoval asked for a grant "*in the name of the Supreme Government*," for an exceedingly valuable consideration, namely, (1) unpaid services rendered as a civil and military employé of the nation for nearly forty years, of which ~~nine~~ six had been spent at the head of the prefecture—even the unpaid salary due him as prefect amounting to $9,000—and also (2) a very large amount due him for *money lent to the nation*. He applied to the one official who was "the only and necessary conduct of communication" with the Supreme Government, and that official was at once Governor, Commandant General, and Head of the Treasury, well cognizant of the state of accounts between Sandoval and the Government. He asked for the grant in *compensation*, and, consequently, *satisfaction*, of his large claim. He asked this settlement as a matter of "*justice*." The law of April 4, 1837, had devoted the public lands to the satisfaction of debts *already contracted* as well as of debts that *might be contracted* in the future. The nation was in great need of cash to pay troops on the eve of mobilization of an increased army for the impending war. Armijo, as Commandant General, had already been warned to employ the moneys of the Departmental Treasury for the preferential uses of the army. To pay Sandoval money would have been unpatriotic, if Sandoval would take land instead; for land had no money value and it was idle to attempt to raise cash in New Mexico by ordinary sales. Al-

ways patriotically self-sacrificing, Sandoval offered to take the land, which the nation could spare, instead of money, which it could not spare.

The deal was consummated. Nearly sixty years have elapsed.

Did the treaty of Guadalupe Hidalgo guarantee Sandoval the right "to retain the property" which he then "possessed," or not? Would the Mexican government have ever disturbed a right so fairly earned, so fully paid for? Did the Supreme Government, by the treaty, sell to us a right to *forfeit* this honest title, or did it guarantee its integrity? Compare what was said by the court in the *Ely case*, 171 U. S., at pages 238, 239, 240, when it spoke by Mr. Justice Brewer, with what was said by the court in the *Arredondo* case, 6 Pet., at pages 736, 737, 740, when it spoke by Mr. Justice Baldwin, and we find the court, in both cases alike, interpreting treaties according to the maxim, *noblesse oblige*.

Mr. Justice Brewer said (171 U. S. pages 238, 239):

> "Sustaining the validity of the grant *to the extent of the land paid for* is but carrying out the spirit of the treaty, the obligations of international justice and the duties imposed by the act creating the Court of Private Land Claims. * * * Article 8 of the treaty of Guadulupe Hidalgo provided, in reference to the ceded territory, that 'Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or

disposing thereof, and removing the proceeds wherever they please, without being subjected, on this account, to any contribution, tax, or charge whatever,' and that, 'in the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected.' 9 Stat. 929. * * *

"The spirit of the treaty is fully carried out when the amount of land *petitioned and paid for* is secured to the grantee or his successors in interest. This Government promised to inviolably respect the property of Mexicans. That means the property as it then was, and does not imply any addition to it. * * *

"It must be remembered, in this connection, that, by section 7 of the act creating the Court of Private Land Claims, it is provided 'that all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States.' Therefore, in an investigation of this kind that court is not limited to the dry, technical rules of a court of law, but may inquire and establish that which equitably was the land granted by the government of Mexico."

In the *Arredondo* case (6 Pet., at page 737), reference is made to the solicitude of the king to protect the rights of his colonial subjects—

"By using words which expressed his intention, in his own language, that the grants were ratified and confirmed by both governments, in the very act of cession, subject to no future contingency. This furnishes a powerful and obvious reason for inserting this article in Spanish, so that the intention

would be clearly understood, by words denoting it in a manner not to be mistaken, whenever any doubt should arise; and whenever the treaty should be produced as evidence of the cession, or for any other purpose, there should always appear, in the native language of his then, or former, subjects, full evidence of his declared intention to protect their rights, acquired by his grants, pledging his honor and faith for their security. His minister was not willing to trust so important a matter to a treaty only in the English language. The present situation of the holders of the grants, the state of the country, the opinion of this court in *Foster vs. Neilson* [2 Pet.], and the arguments in this cause, show the wisdom and justice which prompted him to express the intention of the king in his own language and that of his subjects."

Thereupon, since that treaty had been committed (as that of Guadalupe Hidalgo has since been) to *judicial* construction, the court proceeded to overrule the former *political* construction, and, accepting the Spanish version, declared (page 741):

"The king of Spain was the grantor, the treaty was his deed, the exception was made by him, and its nature and effect depended on his intention, expressed by his words, in reference to the thing granted and the thing reserved and excepted in and by the grant. The Spanish version was in his words, and expressed his intention, and, though the American version showed the intention of this government to be different, *we cannot adopt it as the rule* by which to decide what was granted, what excepted, and what reserved; the rules of law are too clear to be mistaken, and *too imperative to*

> *be disregarded by this court.* We must be governed by the clearly expressed and manifest intention of the grantor, and not the grantee, in private, *a fortiori*, in public grants."

We submit that, by the treaty of cession, Mexico delivered political jurisdiction of New Mexico over to the United States, subject to the sacred duty to protect our "*justo título adquirido*" to the Estancia, as a "complete and perfect" private acquisition, and to permit us to retain it as the legitimate satisfaction paid and delivered by Mexico to Antonio Sandoval for forty years of faithful public service, in peace and war, and for his pecuniary advances to the national treasury.

We respectfully ask the court to peruse the powerful and eloquent dissenting opinion of Mr. Justice Grier, in the *Vallejo* case, 1 Black, 541, at page 555, *et seq.*, which, we believe, would have expressed the unanimous opinion of the court, had no doubt existed in the minds of the majority on the subject of the authenticity of Vallejo's title, and especially had the bench which then officiated been as well informed in this "perplexing" class of cases as is the bench which we have the honor to address.

Respectfully submitted.

JNO. H. KNAEBEL,
ERNEST KNAEBEL,
of Counsel for Appellants.

APPENDIX.

Opinion of Señor Don Eduardo Ruiz, *Procurador General de la Nacion*, on the representative authority of Manuel Armijo, Governor and Commandant General of the Department of New Mexico, to make grants under the central system of government.

[The original of the following letter of Señor Ruiz is left with Mr. McKenney for the inspection of the court.]

"CORRESPONDENCIA PARTICULAR
del
" PROCURADOR GENERAL
de
" LA NACION.

" México, Marzo 6 de 1886.

"*Señor Lic. D. Emilio Pardo,*
" *Muy Señor mio:*

" Desea U. conocer mi opinion relativa á la concesion de tierras de Las Animas hecha á los Señores Vigil y St. Vrain por el Señor General Don Manuel Armijo, como Gobernador y Comandante Militar del Departamento de Nuevo México, en el año de 1843, época en que la nacion mexicana estaba regida por un gobierno de República unitaria ó central. No conozco la fecha de la concesion, pero si esta se verificó estando vigentes las Bases de Organizacion para el gobierno provisional de la República adoptadas en Tacubaya en 28 de Setiembre de 1841, es claro que conforme á las Bases 6a

y 7a el Ejecutivo tenia plenas facultades en todos los ramos de la administracion pública, sin mas limitacion que de la responder de sus actos ante el primer Congreso Constitucional. Los gobernadores y comandantes militares de los Departamentos no eran otra cosa que meros agentes del Ejecutivo y en consecuencia obraban con sus instrucciones, reservadas ó públicas, y á su vez, solo eran responsables ante él en el ejercicio de sus funciones.

"Si la fecha de la concesion de que me ocupo es posterior á la de 12 de Junio de 1843, entonces estaban vigentes las Bases de Organizacion política de la República Mexicana que tenian el carácter de Constitucion ó Ley fundamental del pais. En ellas encontramos que el poder legislativo no tenia facultad alguna espresa para determinar sobre concesiones de terrenos baldíos ó de colonizacion, pues que respecto de estos, la fraccion 5a. del artículo 134 encomienda á las autoridades locales del Departamento decretar lo conveniente respecto de adquisicion, enagenacion y permutas de bienes que pertenecian al Departamento; pero disponiendo que sobre enagenaciones de terrenos se observaran las leyes vigentes y lo que determinaban las de colonizacion.

"Ahora bien, respecto de esta materia no habia en aquella época mas ley que la de 4 de Abril de 1837 que dispuso que el gobierno (Ejecutivo Nacional) procediera á hacer efectiva la colonizacion de los terrenos de la República, por medio de ventas, enfiteucis ó hipotecas, con la reserva de dar complimiento á lo prometido á los militares que cooperaran á la independencia ó á lo que el Congreso decretare en favor de las tribus indígenas ó de los que ayudasen al restablecimiento de Texas, sin embarazarse

por las leyes anteriores de colonizacion que quedaban derogadas, excepto en lo relativo á introduccion de esclavos.

"De esta manera quedó el gobierno central facultado para enagenar los terrenos nacionales ó baldíos en cualquiera estension de ellos que le pareciera conveniente. En la ley de 11 de Marzo de 1842 se permitió á los extrangeros adquirir y poseer bienes raices por compra, adjudicacion, denuncia ó cualquiera otro título; y aunque se puso la limitacion de que estas disposiciones no comprendian á los Departamentos limítrofes ó fronterizos, respecto de los que se expedirian leyes especiales de colonizacion, sin que pudiesen adquirirse por extrangeros, esta prohibicion no era absoluta, sino que podia ser dispensada por el Gobierno Supremo de la República. Conforme á esta ley los extrangeros que adquirian bienes raices en la nacion, se consideraban por el mismo hecho, bajo el imperio de la ley Mexicana, es decir con las obligaciones y derechos de los Mexicanos. Llamo sobre este punto la atencion porque encontrará aplicacion mas adelante. Tambien hay que fijarse en el hecho de que entre las atribuciones del Congreso, establecidas en las Bases, no está la de legislar sobre terrenos baldíos pues repito que esta se halla consignada en el título 6o. que habla del 'Gobierno de los Departamentos.'

"No debe olvidarse que el carácter de las constituciones políticas que establecieron en México el gobierno central, desde las leyes constitucionales de 1836 hasta las Bases Orgánicas de 1842 no era el de poderes espresamente determinados; sino que aunque se detallaban algunas obligaciones á las funcionarios, las limitaciones que se les ponian eran limitadísimas: de tal manera, que puede

decirse que dichos funcionarios públicos podian hacer todo aquello que no les prohibia expresamente la ley, al contrario de lo que dispone actualmente la Constitucion de 1857, conforme á cuyo sistema, los ciudadanos son los que tienen esa libertad, mientras que el gobierno no puede hacer mas que aquello que la ley espresamente le manda ó le permite hacer. Y como la enagenacion de terrenos baldíos y los asuntos relativos á colonizacion, son funciones de un órden absoluta y meramente administrativo, resulta que el gobierno (el Ejecutivo), en quien residia la accion administrativa, era el único que podia enagenar los terrenos baldíos ó hacer concesiones sobre colonizacion por medio de sus agentes que lo eran, conforme á las Bases Orgánicas citadas, los gobiernos de los Departamentos.

"En el supuesto (que hasta ahora no está, no solo probado, sino ni siquera presentado) de que el gobernador Don Manuel Armijo se hubiera extralimitado de sus instrucciones ó hubiera obrado sin ellas, ya hemos dicho que este seria solamente un caso de responsabilidad, exijible por el Gobierno Supremo y por nadie mas. Que esto es cierto, basta para demostrarlo el carácter de las instituciones políticas que entonces regian; pero aparte de las disposiciones citadas anteriormente y solo por robustecer esta consideracion menciono el decreto de 7 de Julio de 1854, espedido por el gobierno dictatorial de Don Antonio Lopez de Santa Ana sometiendo á revision los títulos de enagenaciones de baldíos hechas desde 1821 á 1854 y declarando nulas las verificadas por los Departamentos del sistema central, sin conocimiento y aprobacion del Gobierno general, decreto que no podia tener aplicacion en el caso de Vigil y St. Vrain, porque

Nuevo México era ya en esa fecha territorio de los Estados Unidos y que á mayor abundamiento fué especialmente derogado por el Presidente provisional Don Juan Alvarez en 3 de Diciembre de 1855.

"De lo dicho hasta aquí resulta que los gobiernos de los Departamentos tuvieron facultad para hacer concesiones de terrenos y que el gobierno del General Armijo pudo hacerla en favor de Vigil y St. Vrain en las tierras llamadas Las Animas y resulta tambien de una manera evidente que la concesion de que se trata no fué objetada por el Gobierno General ántes de celebrarse el Tratado de Guadalupe: de modo que los concesionarios tenian en su favor un título *de propiedad* cuya legitimidad nadie les reclamó.

"Pero suponiendo que hoy quiera disputárseles esa legitimidad, nadie pondrá en duda que la celebracion del Tratado de Guadalupe los halló en posesion de las tierras concedidas, posesion indisputada desde 1843.

"Conforme á la legislacion Mexicana, y principalmente me refiero á la de aquella época, la posesion, simple tenencia de la cosa, daba al que la tenia el carácter ventajoso de presumir en su favor un título perfecto de propiedad, mientras no se probaba lo contrario; y el que poseia de esta manera quieta y pacificamente por espacio de un año y un dia, no estaba obligado á responder sobre la posesion: pues le bastaba la tenencia corporal y el ánimo de mantener este derecho, para suponer que lo tenia de buena fé. Así lo disponian las leyes 10, título 30 Partida 3a., y la 3a. título 8o. Libro 11 de la Novísima Recopilacion.

"La posesion entre nosotros, considerada juridicamente trae su orígen de la legislacion Romana que no la apreciaba solamente

como la consecuencia de un derecho, sino como el derecho mismo: su base es aquella regla escrita en la Ley de la Doce tablas que dice: 'El que posee una cosa durante una ó dos años se hace su propietario.' Tan respetado es este derecho que aun suponiendo ilegal la posesion, la ley la garantiza al poseedor por medio de procedimientos violentos que son la materia de los interdictos.

"Vigil y St. Vrain eran por lo menos poseedores de las tierras de Las Animas, en las condiciones y con las ventajas de la ley; y solo el gobierno tenia el derecho de reivindicar la propiedad por medio de un procedimiento legal. Si en vez de hacer esto, hallamos algun acto auténtico por el que lleguemos á convencernos de que el gobierno reconoció y respectó esa posesion, entonces es claro y jurídico afirmar que por esa declaracion del gobierno, quedó consolidada la propiedad en favor de Vigil y St. Vrain de los terrenos que bajo un supuesto hemos imaginado que tenian en posesion.

"Ese acto lo encontramos solemnemente autenticado en el Tratado de Guadalupe Hidalgo, ratificado por el gobierno Mexicano en 30 de Mayo de 1848. En el artículo 8o. se estipuló que los Mexicanos establecidos en territorios pertenecientes ántes á México podian conservar los bienes que *poseian* ó enagenarlos. El Tratado no usó de la palabra propiedad, porque siendo redactado este artículo en favor de los Mexicanos, á quienes el tratado hacia cambiar de patria, siquiera fuese en cuanto á la ubicacion de sus bienes, quiso emplear una palabra mas genérica que asegurase los derechos de aquellos, abrazando todos sus bienes, cualquiera que por otra parte fuese el carácter con que los disfrutaban. Y esto, aunque

los ciudadanos Mexicanos adquiriesen despues el título y derechos de ciudadanos de los Estados Unidos. Ya hemos dicho que, suponiendo que los poseedores de esos terrenos en virtud de concesiones hechas por los gobiernos de los Departamentos, no fuesen Mexicanos, debian considerarse como tales en cuanto á los derechos y obligaciones que contraian por sus respectivos contratos, y en consecuencia están incluidos en la declaracion que se hizo en el artículo 8 del Tratado de Guadalupe.

"Si la anulacion de las concesiones era, como es, un acto de la soberania; cuando el gobierno Mexicano no la pretendió, sino que ántes bien escudó con su proteccion á los que iban ya á ser súbditos de otra soberania, de ninguna manera pueden los concesionarios ser privados de sus derechos por el gobierno de los Estados Unidos, porque si estos lo pretendieran hacer, ó asumirian el ejercicio de la soberania de México para anular las concesiones hechas con anterioridad á 30 de Mayo de 1848 ó aplicarian al exámen de las concesiones, leyes Americanas que no pudieron estar vigentes cuando se celebraron los contratos y que podrian considerarse de efecto retroactivo, supuesto que la vigencia de ellas para los Mexicanos de que habla el artículo 8o. del Tratado de Guadalupe comensó desde la publicacion de ese documento oficial, y se trataria de aplicarlas á casos que tienen un origen anterior. Ambas suposiciones nos conducirian á resultados absurdos.

"Me repito de U. afectísimo, atento y S. S.,

"EDUARDO RUIZ."

Dissenting opinion of Associate Justice Stone:

"IN THE

"U. S. COURT OF PRIVATE LAND CLAIMS,

"Santa Fé, New Mexico, December ..th, 1900.

"JOEL PARKER WHITNEY,
"No. 152. *vs.* } The Estancia Grant.
"THE UNITED STATES.

"Stone, Associate Justice: My dissent from the decree in this case seems to be all the more justified in view of the failure of the other justices to find any common ground on which they can stand against the title conferred by the Mexican authorities on Antonio Sandoval.

"1. Justice Murray presents in his opinion cogent reasons for holding (according to our mode of interpretation, as distinguished from the Mexican), that the federal system of colonization, formulated in the colonization law of 1824 and the regulations of 1828, was utterly subverted by the adoption of the central system and the statutes and decrees promulgated during the central period of Mexican history in relation to the disposition of public lands. It is apparent that Justice Murray would have favored the confirmation of the grant in question but for his doubt as to the powers at the time of the supreme executive—a doubt which I do not share.

"2. The opinion of Justice Sluss, fully concurred in by Justice Fuller, maintains the proposition that the colonization law of

1824, as well as the regulations of 1828, continued in force under the central system, even after the adoption of the new colonization law of April 4, 1837, and the Bases of Tacubaya of September 8, 1841 (Reynolds, 234), although the federal states and territories had all been abolished and a uniform 'department' substituted for each. This opinion assumes the concurrent operation of the old system of colonization, which was based on a federal policy, and the new system, which was based on an inconsistent central policy; but it is impossible for me to understand why the grant should be rejected as being in conflict with the old law when it can well be upheld as in harmony with the new.

"3. The chief justice, in his separate opinion, lately filed, takes the novel ground that the regulations of 1828 might have been adopted and continued in practice by the executive department of the government, even in spite of the repeal of the federal law under which they were originally issued. There is much in this opinion to elucidate the obscurity which attends the subject of executive grants made under the central system, for the chief justice shows by the contemporaneous practice of the executive authorities that the public domain was treated as a subject of executive administration, and he calls attention to the pertinent fact that the construction of both constitutions and statutes was within legislative and executive jurisdiction, independently of the judicial tribunals. I concur in the argument of this opinion, but that argument leads me to the inevitable conclusions, first, that the making of the grant in question was within the competency of the supreme executive, and, second, that Governor Armijo was his ap-

propriate ministerial agent in its execution. Article 141 of the *Bases Orgánicas* provides: 'The governors are the only and necessary conduct of communication with the Supreme Authorities of the Republic. The cases of accusation or complaint against themselves and the official correspondence of the superior tribunals with the Supreme Court of Justice in judicial matters are excepted.'

"WILBUR F. STONE,
"*Asso. Justice.*

"December 20th, 1900."

Separate opinion of Chief Justice Reed:

"IN THE

"U. S. COURT OF PRIVATE LAND CLAIMS,

"Santa Fé, New Mexico, December 10th, 1900.

"JOEL PARKER WHITNEY,
"152. *vs.*
" THE UNITED STATES. } The Estancia Grant.

"Reed, C. J.: I concur in the conclusion reached in this case, but do not agree with all that is said in the opinion of Associate Justice Sluss. It is held in the opinion that the Colonization Law of Mexico of August 18th, 1824, remained in force at the time the grant in question was made. In view of the language of the law of April 4th, 1837, I do not concur in that holding. But in my opinion the question as to the effect of the law of 1837 on that of 1824 is quite immaterial, for the grant was made not under that law, but under the regulations of November 24th, 1828, which was a decree of the President of the Republic promulgated under authority conferred by the law. The law regulated the matter of the disposition of the public lands by the states within their jurisdictions, and conferred upon the executive of the government power to make all necessary regulations for the disposition of such lands within the Territories of which New Mexico was one. The question, then, is not whether the law remained in force, but whether the regulations continued operative when the grant was made. And it is manifest that the law which governed the matter within the states might be repealed without at all affecting the regulations established by the Executive, governing the same subject within the

Territories. The law of 1837 provides that the Government (*i. e.*, the Executive), in concurrence with the council, shall proceed to make effective the colonization of the lands which are or should be the property of the Republic, and that it, the government, should not be compromised by the laws heretofore enacted on colonization, which *enactments* are all repealed in so far as they conflict with this law. Clearly this law confers upon the executive and the council all powers with reference to the disposition of all public lands, just as the former law had conferred the same power with reference to such lands within the Territories upon the executive. True, it required that the proceeds, which *in the first instance should not be* less than $1.25 per acre, should be applied to the payment of the public debt. Just what was the effect of the words '*in the first instance*' in the law is difficult for us to determine. The duty of construing the act, as a whole, and in its parts, devolved upon those officers whose duty it was to administer it, and their interpretation was final and conclusive, for in Mexico the laws which relate to the executive department are not the subject of judicial construction, but the executive and legislative departments are the sole judges, both of the constitutionality and effect of such laws.

"We know as matter of fact that in all the territory acquired by the United States from Mexico there never was a sale of land by Mexico at $1.25 per acre, or for an amount anywhere near that. Yet public lands were continually disposed of in that territory after 1837. This circumstance affords ample evidence to my mind that a construction was placed upon the words of

the law favorable to the disposition of lands in the remote regions of the country at a less price, and even permitting them to be granted without consideration other than that of settlement when the real interest of the country and people would thereby be conserved.

"But the executive was required also to determine the effect of the repealing clause of the law; whether it had the effect to repeal the regulations of 1828 as well as the Colonization Law of 1824, or whether its effect was upon the latter only while the regulations were left in force and effect. If the latter construction was adopted, then every right to lands in the ceded territories which accrued under that construction is now entitled to be protected. It makes no difference that we may think the construction erroneous, for it is our jurisdiction only to inquire as to the rights which accrued as against the government of Mexico under its laws, as they were construed by those officers who were charged with the duty of executing them. And it will hardly be denied that a valid right might accrue as against the government under an erroneous interpretation of the law if the officer who made that interpretation was the sole and final judge of the question.

"I admit that I know of no direct, written evidence that the construction above suggested was placed upon the law of 1837. But in Mexico the practice, as is done with us, of preserving and publishing the official construction placed upon statutes does not appear ever to have obtained. But the uniform and continuous course of procedure with reference to the disposal of public lands in the territories as it is disclosed by the public records both in California and

New Mexico, convinces me that that construction was placed upon the law by every department of the government, and by every public officer who performed any duty, with reference to the subject.

"The governors of California and New Mexico continuously made grants of land after 1837, and up to the time of the American occupation of the country, asserting in every instance the power to make the grant under the regulations of 1828. Those officers were required to make periodical reports of their official actions, so that the executive and legislative departments of the government were presumably informed of all that was being done in the matter and the alleged authority under which it was done, and so far as we know, there never was a word of disapproval of the practice or of administration on the subject from any department or officer superior to the governor.

"In addition to that, no other method for the disposal of public lands within those territories was ever provided after 1837, and it seems incredible that the government would have omitted to make such provision if no provision at all existed with reference to the subject, for all of its interests would be promoted by the settlement and improvement of these remote regions, and the prosperity of the inhabitants and their residence in the country could be promoted only when ample means were afforded them for acquiring lands.

"These considerations lead me to the conclusion that all grants made in conformity to the regulations of 1828, after the enactment of the law of 1837, are entitled to confirmation.

"(Signed) JOSEPH R. REED,
"*Chief Justice.*"

No. 133.

FILED
MAY 27 1901
JAMES H. McKENNEY,
Clerk.

By. of Knaebel for Appellants (a

IN THE

SUPREME COURT

Filed May 27, 1901.

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

No. 133.

JOEL PARKER WHITNEY AND FRANKLIN H. STORY,
Appellants,
vs.
THE UNITED STATES, ELOISA BERGERE, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

APPELLANTS' MOTION FOR MODIFICATION OF DECREE, Etc.

JNO. H. KNAEBEL,
ERNEST KNAEBEL,
of Counsel for Appellants.

DUMARS & WILLIAMS, PRINTERS, 1410 Curtis Street, Denver. Phone 2276.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

No. 133.

JOEL PARKER WHITNEY AND FRANKLIN H. STORY,
Appellants,

vs.

THE UNITED STATES, ELOISA BERGERE, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

APPELLANTS' MOTION FOR MODIFICATION OF DECREE, Etc.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellants, J. Parker Whitney and Franklin H. Story, in view of the extraordinary jurisdiction of this court in causes appealed from the Court of Private Land Claims (*United States vs. Coe*, 155 U. S. 76), respectfully pray your Honors to modify the decree herein by an order remanding the cause for further proofs as to the condition of the Mexican archives at Santa Fé, and as to the actual possession and enjoyment of the Estancia grant by the grantee and his assigns, to the end that, upon such further proofs, when had, and the proceedings herein already had, the Court of Private Land Claims may consider and determine the question whether your petitioners shall then appear to be equitably entitled to a confirmation of the said grant, to the extent of eleven square leagues.

In aid of this petition, your petitioners file the subjoined affidavit of the appellant J. Parker Whitney, and they also urge upon your Honors the equities indicated by the following propositions, viz.:

1. In view of our sincere belief that Hon. Eduardo Ruiz was justified in his opinion that such grants as ours had legitimate origin in the supreme authority, conferred by the act of 1837, and manifested through the usual departmental agents, we did not feel it to be dutiful to our clients to contend for a confirmation of only eleven square leagues, under the law of 1824 and consequent customs and usages.

2. But, respectfully submissive to the ruling of the court, to the effect that, whatever granting powers the Supreme Executive possessed, by virtue of the act of April 4, 1837, or otherwise, the court has no jurisdiction to declare in this case, upon presumption, that Armijo made the Estancia grant with the supreme sanction, nevertheless we now suggest that there are grave reasons for supporting our claim, to the extent of eleven square leagues, if it be assumed that the colonization law of 1824, or customs and usages therefrom arising, were operative in New Mexico in 1845. The court has encouraged this assumption by its decisions in *United States vs. Elder*, 177 U. S. 104, 109, 112, and several other cases.

3. A modification, or a remanding for further proofs, would be in furtherance of justice.

In the *Elder* case, 177 U. S., at page 124, Mr. Justice White declared, as to the Cebolla grant, there considered, and the absence of archive evidence: "The tenor of the act of possession forbids the inference that any formal grant was ever executed by the governor," and "The case is therefore without the principle of various decisions of this court where, *with respect to a formal grant*, introduced in evidence, *complying with the requirements of the regulations*, but whose authenticity was disputed, the case was remanded to the lower court to permit the introduction of evidence, if such could be produced, to establish that archive evidence of the grant once existed."

Among the decisions thus alluded to are *United States vs. Galbraith*, 22 How. 89, and *United States vs. Cambuston*, 20 How. 59.

In the case last cited, this court said (p. 68):

> "We should not hesitate to reverse the decree below, and direct a decree against the claimant, were it not that the mode and manner of conducting the case, both before the commissioners and the District Court, on behalf of the Government, may have misled him; for if the objections here stated had been made at the proper time before either of the tribunals, it may have been in his power to have removed them by the introduction of further evidence. It would be unjust, therefore, to deprive him, under the circumstances, of the opportunity to furnish such evidence.
>
> "We shall therefore reverse the decree, and remand the case to the court below for a further hearing."

An equivalent indulgence was granted to the Town of Albuquerque in United States vs. Albuquerque, 171 U. S. 685.

4. The present case is clearly within the "principle" mentioned by Mr. Justice White.

5. The Estancia case was tried in December, 1898, up to which time no New Mexican grant had been criticised by this court or by the Court of Private Land Claims because of the failure of archive proof. On the contrary, it was shown in the very first case tried by the Court of Private Land Claims in New Mexico—the *Cubero* grant, confirmed by that court September 26, 1892, and by this court, on appeal, November 11, 1895 (see *United States vs.*

Chaves, 159 U. S. 452, 460, 462)—that the archives at Santa Fé had been despoiled to a lamentable extent; and, therefore, the absence of archive proof in that case was deemed explained and was treated as unimportant, in view of credible oral proof of a grant once seen in private hands and of possession thereunder. From the date of the trial of the *Cubero* case, September 16, 1892, down to and including the decision of the Estancia by the Court of Private Land Claims, December 20, 1898, and even much later, it was assumed by that tribunal, and even by the Supreme Court on appeal, that genuine original grant papers, such as petition, grant, and act of juridical possession, found in the hands of the claimant, and accompanied with possession, were to be taken as plenary *prima facie* proof of title, even in the absence of duplicate originals or registry notes in the archives.

It is familiar that this court will take judicial notice of public facts, especially when brought to its attention in prior cases. Hence we, like other litigants, were content with perfunctory proof of the mutilated condition of the archives, etc., being confident, from the usual thought and practice of the Court of Private Land Claims, and even of the Supreme Court, in appeals, and especially from the case of United States vs. Chaves, that the rule adopted in the later California cases to avoid the frauds incident to *antedated* California grants had no place in New Mexico, where not one of such frauds had ever been discovered, or even suggested.

The first case in which the Supreme Court ever suggested the application of the peculiar California

"general rule" to New Mexico titles was that of *Hays vs. United States*, 175 U. S. 248, 257, decided December 4, 1899—nearly a year after the trial of the Estancia case, and even that suggestion was made only as a collateral argument in aid of the opinion of the court that the Apache Springs title then considered did not even purport to be a grant by a governor.

The case of *Bergere vs. United States*, 168 U. S. 66, was decided October 18, 1897, and not a word was said in the opinion about any *necessity* for showing archive evidence, but, on the contrary, it was intimated, at page 76, that, if "some explanation as to the possession of [the alleged granting] papers by Baca" had been given, "showing they were intended as in place of the testimonio," the claim might have been more favorably regarded. In that case (pages 78 and 84), the court treated certain subsequent grants (including the Estancia) as having actually been made by the Mexican authorities, and that point was urged by counsel for the government, although their operative validity was not either admitted or denied. This invocation of our title as evidence imports full admission of its *authenticity*.

6. The case of *United States vs. Chaves*, 159 U. S. 452, being extant as controlling authority, on the point of the status of the archives, etc., when the Estancia case was tried, it seems only fair to allow us an opportunity to make further proof on that subject conformably to the theory of the cases since decided which call for a stricter mode of proof.

This would be in accord with settled principles, *e. g.:* Contracts made conformably to the contemporaneous judicial exposition of the relevant law are frequently upheld for that reason, although such contracts would be deemed void if made contemporaneously with other later judicial decisions. Such new rules of decision are analogous to a change in the statutory law, and are not permitted to operate retroactively to the prejudice of litigants.

Douglass vs. Pike County, 101 U. S. 677.

See, also—

101 U. S. 688.

Olcott vs. Fond du Lac Co., 16 Wall. 678.

7. It must be borne in mind that, under the Mexican system, there were several depositaries of "archives." Thus (1) such original instruments or duplicates as the political chief (under the federal system) retained on making a colonization grant, remained at first in his own custody, (2) from the political chief's custody the same identical instruments *(expediente)* would go to the territorial deputation (a legislative body which ceased to exist under the central system), and (3) from the deputation's custody the same identical documents would sometimes go to the *supreme government*, in Mexico.

Again, every magistrate participant in the adjudication of land titles kept his own protocol, the same being a *public archive*.

Many of our citizens and corporations have invested recently large sums of money in land and

mining ventures in old Mexico, and are well aware that the original of every transfer of title appears in the "protocol" or "matrix" kept in public, official custody by the notary (who is an adjudicating and recording officer), and that the private parties interested receive for their "formal title" only duplicates or *testimonios*.

In the grant (of A. D. 1836), cited in the opinion of Mr. Justice Brewer in *United States vs. Pena.*, 175 U. S. 500, at page 503, it was commanded that "the *alcalde* shall take charge of the general document of distribution, *which shall be for the archives*, and he shall give *testimonios* therefrom, as may be requested of him."

Commenting on this, Mr. Justice Brewer says (*Ib.*, page 505):

> "The alcalde is to take charge of this general document for filing in the archives, but *while holding it* he is to give testimonios from it to the several parties who receive grants within the out-boundary limits."

In that case, the act of possession (*Ib.*, page 503) bears date March 25, 1836, yet the prefect, in his order to the alcalde, made as late as March 20, 1848 (*Ib.*, page 507), refers to "all the individuals who are noted down in the grant of said possession, which *ought to be* in the *archive under your charge*."

8. Therefore, an archive is traced to proper, *public* custody when traced into the hands of a lawful *public custodian*.

Now, the original petition and grant in the Es-

tancia case are clearly traced into *public custody;* for we find, from the act of juridical possession, abundantly proved and also *admitted* by the government to be *genuine*, that, upon the very ground, the magistrate, "in *obedience to the decree* of the most excellent governor," proceeded to the land, with his attending witnesses, and then and there "exhibited to him [Aragon, representing the grantee Sandoval] the *petition* the latter had made," etc. It will be remembered that the grant is written on the "petition." (*Transcript*, fol. 78.) The livery of seisin being accomplished, the magistrate then delivers to Sandoval's representative, *not* the grant, but "the present document of possession" (the document which Nolan had recorded. *Transcript*, fol. 74), "that it may serve him as formal title."

It would violate all applicable rules of interpretation to construe this act of juridical possession as importing that the magistrate delivered to Sandoval's representative the archive paper which was then and there merely "exhibited." A legitimate presumption follows that the magistrate put the original petition and grant in the proper place of deposit. In such a case, *Omnia rite esse acta præsumuntur* applies.

Sutter case, 24 How. 170.

9. On more critical examination, we infer that (1) the grant and (2) the act of juridical possession were detached papers, each separately folded and endorsed, and that the only paper recorded by Gervacio Nolan, under the Kearney code, was his copy of

the act of juridical possession, appropriately in his hands. The certificate of the registrar, Donaciano Vigil, is on that paper only. If Gervacio Nolan had had the original petition and grant in his possession, would he not have recorded them with the act of possession?

But the magistrate who had "exhibited" the petition, etc., to the grantee's representative, on the land, during the ceremony of delivering possession, would dutifully deposit such archive papers in a proper depositary.

It was quite the usual practice, in presenting "claims," that is, "notice of claim," to the surveyor general, under the act of 1854, to rely on "archives" already in his hands, and that is probably what was done by Nolan.

NOTE: In the deed from Sandoval to Nolan, July 8, 1848, reference is made to the "*anterior*" grant, "marked letter A," but in the acknowledgement of that deed the deed is referred to as "*antecedente.*" Yet, in making the translation, the translator renders "*anterior*" and "*antecedente*" each by the English word "foregoing;" whereas that translation is misleading. "Foregoing" fairly gives the sense of "*antecedente*," but not of "*anterior*," since "anterior" was used to indicate *priority of time*—in reference to the original grant. The acknowledgment to the deed was a part of that instrument, and on the same paper; but the "*anterior*" grant was not a part of the deed or annexed to it, but a different, separate and distinct paper, probably

then in the archives, there deposited by the proper magistrate or his successor in office.

10. On reading the four opinions filed by the justices of the Court of Private Land Claims, it is evident that no doubt whatever was entertained by a single justice as to the *authenticity* of the Estancia title papers, or as to the good faith of the claimants, but that the only question considered or debated was that of the *authority* exercised by Governor Armijo in creating the title. The claimants invoked the authority of the Supreme Executive, who, by the law of April 4, 1837, had been clothed with general administrative power over the public domain, and they contended that, in view of all the circumstances, it should be held that Armijo acted in the matter under presumed executive sanction. This was the only serious ground of contention on the trial, although, technically and theoretically, all possible questions were relevant under the perfunctory pleadings and objections of the government, and, indeed, under the literal import of the statute establishing the court. Mr. Justice Murray, in his opinion, seemed to yield assent to our claim that, *if the Supreme Executive was competent to make our grant*, it was reasonable to presume that Armijo acted with the supreme approval; but Mr. Justice Murray denied the right of even the Supreme Executive to make such a grant. Mr. Justice Stone sustained the grant, because he believed that the Supreme Executive could make it, and also that Armijo must be presumed to have acted with the supreme sanction.

The other three justices, all believing that the regulations of 1828 were in force, but only two of them believing that the law of 1824 was also in force, appear to have thought it was more justifiable to assume the grant to be subject to the eleven square leagues limitation of the old colonization system than to assume it to be an exercise of the wide discretionary power of the Supreme Executive, existing outside the restrictions of that system. Therefore these three justices—Mr. Chief Justice, Mr. Justice Sluss and Mr. Justice Fuller—put their decision on the ground that the confirmation of the Bosque del Apache claim for upwards of eleven square leagues displaced Nolan's right to secure the Estancia, or any part of it. (*Transcript*, fols. 171, 172.)

The Bosque del Apache was the only obstacle, and they apparently did not regard the mere extent of the Estancia as any obstacle to allowing eleven square leagues.

In the opinion written by Mr. Justice Peckham, in this case, the court regarded our title from alternative views; that is, first, on the assumption that our title depends on the old federal law, and, secondly, on the alternative assumption that it depends on an alleged supreme executive authority. The ruling of the court is positive that, under the restricted jurisdiction conferred on the Court of Private Land Claims, the action of Armijo cannot be aided by a favorable presumption. To that ruling we are respectfully submissive.

But we feel that, in equity and good conscience, it is still within the power of the court, by a modifi-

cation of its decree, to permit us to retain eleven square leagues of the estate we have held so long, and thus save at least a part of our large investment for purchase and improvements. (See annexed affidavit of J. Parker Whitney.)

11. The prohibition of the colonization law of 1824, as to the extent of land acquisitions under that law, was that not more than eleven square leagues of land could be united "*como propiedad*," that is, *as property in fee*, in the hands of one person (see Mr. Justice Brown's definition of "*propiedad*," etc., in the Zia case, 165 U. S. 198); but that prohibition concerned only the government and the grantee, and could not be invoked by a third party, except by judicial denouncement. The *possession* of a larger area under one grant was not unlawful or void, but such *possession* could be asserted as property—"*como propiedad*"—only to the extent of eleven square leagues. Hon. Eduardo Ruiz, in his opinion, shows the distinction in Mexican law between *possession* and *property*. A grant under the colonization law of an area exceeding eleven square leagues was, by the law of Mexico, not a mere nullity, but it was a thing of high and legal merit and significance. It was a legal possession *voidable for the excess only*. Orozco (mentioned by this court in *United States vs. Santa Fé*, 165 U. S. at page 710) says, in his *Legislacion y Jurisprudencia sobre Terrenos Baldios*, at page 202:

> "It might not be idle to inquire whether a title would be valid if issued in contravention of the provisions of Article 12 of

the law, while it was in force, so as to put in the power of one individual more than the eleven square leagues permitted.

"It appears most rational to affirm that, being prohibitive, every adjudication which *exceeds* the agrarian quantity permitted by that law ought to be considered null, and, in that case, *the land which forms such excess* will have remained legally under the dominion of the nation and may be solicited as property by a third person, especially if there was fraud or bad faith on the part of the one who acquired a greater quantity of land than the law permits. All this without prejudice to the allegations that may be made for immunity under the prescription *longi temporis*, should there concur the requisites established by common law for acquiring real property by means of adquisitive prescription."

And this is the view taken by our Congress in the restriction of confirmations to eleven square leagues to each grantee, not only by special confirmatory acts, but even by the act of 1891, establishing the Court of Private Land Claims.

It was the view, declaratory of the common understanding in Mexico, taken by the legislature of Sonora when, in the decree of May 14, 1835, cited in *Ainsa vs. United States*, 161 U. S. 208, at page 226, it declared:

"Those are likewise '*bona fide*' owners who, under the descriptions given in their records of survey, occupy some excess of land, and they are entitled to such excess,

> even after such excess is shown, without any other requirement than that of paying for the excess in accordance with the quality of land and the price which prevailed when the land was measured and appraised," etc.

Even when a grant of quantity, *e. g.*, eleven square leagues, was made to be segregated out of a vastly greater area, and the grantee, before segregation, received possession of the whole of the larger area, his possession was deemed a legal possession of the whole under which he could maintain ejectment in the American tribunals, for any part of the land.

Van Reynegan vs. Boynton, 95 U. S. 33.

12. Now, what was the equitable standing of the Estancia, after its conveyance by Sandoval to Nolan in 1848, in its relation to the Bosque del Apache?

The Bosque del Apache, although dated November 24, 1845, did not vest in legal possession until delivery of juridical possession, March 7, 1846.

Mr. Justice Brewer said, in *United State vs. Pena*, 175 U. S. 500, at page 506:

> "We think it more in consonance with justice and equity to hold, not that the grant was of an entire tract which *never became operative* because of a *failure to give juridical possession*, but that the alcalde rightfully understood it as a grant in severalty, and *giving juridical possession* vested in the grantees the tracts of which they were so placed in possession."

But the Estancia, although dated December 7, 1845, became vested in legal possession long before the Bosque del Apache, for the Estancia was delivered in juridical possession December 15, 1845. Under the colonization law of 1824, was it right for Sandoval, after receiving possession of the Estancia December 15, 1845, to acquire possession of the Bosque del Apache March 7, 1846? Was not his conduct, in accepting possession of the Estancia, December 15, 1845, an *election* to prefer that title to the inchoate equity in the Bosque del Apache? Then came the solemn deed of July 8, 1848, by the very terms of which Sandoval stipulated that neither he nor his heirs would ever interpose any impediment to the Estancia title. Then came the *lis mota*, indicated by the filing by Nolan, in the political department, of his claim to the Estancia, July 15, 1855, years before any claim was set up to the Bosque del Apache. Here was notice to our government of Nolan's prior equity. In spite of the deed of 1848, the *lis mota* of 1855, and the consequent notice to our government of the Nolan equity, was it competent for either the government or Sandoval, by confirmation *ex parte* of the *Bosque del Apache*, under a claim first set up in 1859, to destroy the *Estancia* title?

13. The legal standing of a grant made by a departmental governor, accompanied with possession, especially when such possession has the dignity and ceremonious solemnity attached to a formal juridical act, has been often recognized and declared by this court.

In *Hornsby vs. United States*, 10 Wall. 224, no regard was paid to the historical fact that "territorial deputations" were abolished by the destruction of all territories and states and their conversion into uniform, co-equal departments; but it was assumed that, first, the departmental "*juntas*" and, second, the succeeding "departmental assemblies" were the equivalents of the old territorial deputations, thus leaving it in doubt what the situation was in the departments which were formerly *States*.

But the court said (syllabus):

> "According to the regulations of 1828, the authority to make grants of land in California was lodged solely with the governor. It was not shared by him with the assembly. That body only possessed the power to approve or disapprove of grants made by him. Until such approval the estate granted was subject to be defeated. * * *
>
> "In passing upon claims made under Mexican grants in California, the question is, what *right* did the grantees acquire in the land from the Mexican authorities? This court cannot inquire into any acts or omissions by *them* since those authorities were displaced. It is not authorized to pronounce a forfeiture for anything done or anything omitted by *them* since that period. * * *
>
> * * * "The interest which passed by the grant in this case, whether it be regarded as a legal title, imperfect in its character, and to be perfected by a subsequent official survey and segregation of the quantity designated, or as a mere equitable or inchoate interest, *constituted property* which

> the United States were *bound to protect* by the *stipulations of the treaty of cession*. By the term property, as applied to lands, all *titles* are embraced, legal or equitable, perfect or imperfect."

Of course, all "titles" are held by "right," and not by mere "grace."

SECTION 6 of "An act to establish a court of private land claims and to provide for the *settlement* of private land claims in certain States and Territories," approved March 3, 1891, contemplates that all imperfect claims of any legal standing whatever come under the jurisdiction of the land court, when the claims exist by virtue of such "grant," "concession," or even mere "warrant" or "survey," "as the United States *are bound to recognize* and confirm by virtue of the treaties of cession."

And the court is "authorized and *required* to take and exercise jurisdiction of *all* cases or *claims* presented by petition in conformity with the provisions of this act."

Again:

> "Sec. 12. That all claims mentioned in section six of this act which are by the provisions of this act authorized to be prosecuted shall, at the end of two years from the taking effect of this act, if no petition in respect to the same shall have then been filed as hereinbefore provided be deemed and taken, in all courts and elsewhere, to be *abandoned*, and shall be *forever barred*."

The Estancia has been *sub judice* nearly fifty

years, the whole tract sacredly reserved from sale by the act of 1854, and, in addition to our large purchase money, we have expended upwards of $30,000 in improvements—buildings, wells, windmills and fences. Unless relieved now, under the equitable powers of the court, the land, after the issue of your mandate, will be treated as public domain, and strangers will appropriate our improvements, at little or no cost, under the general land laws, and, excluding us, will gain the fruits of our money and labor, and, besides, enjoy the outlying pastures as *untaxed*, unwatered and waste public lands. We cannot even hope for congressional relief in time to prevent the schemes of avaricious strangers.

The act of 1891 was intended for the just "settlement" of private land claims, in faithful observance of the treaty of 1848.

Respectfully submitted.

JNO. H. KNAEBEL,
ERNEST KNAEBEL,
of Counsel for Appellants.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

No. 133.

JOEL PARKER WHITNEY AND FRANKLIN H. STORY,
Appellants,
vs.
THE UNITED STATES, ELOISA BERGERE, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

STATE OF COLORADO, }
County of Pueblo. } ss.

I, the undersigned, Joel Parker Whitney, of

Boston, in the Commonwealth of Massachusetts, now temporarily sojourning in the city of Denver, Colorado, being duly sworn, depose and say as follows:

I am one of the appellants in the above entitled appeal. I purchased the Antonio Sandoval or Estancia Grant, situate in the county of Valencia, Territory of New Mexico, from the heirs and legal representatives of the late Gervacio Nolan, by deed dated the 23rd day of September, A. D. 1880, and afterwards conveyed one undivided half thereof to the above named Franklin H. Story by deed dated the 6th day of November, A. D. 1880; both of which deeds were recorded in the office of the Probate Clerk of Valencia county aforesaid, in Book "A" No. 4, pages 485-489, and 498-500. The said property was purchased in good faith by myself and Mr. Story, and actual possession of the entire tract was received by us from the said Nolan heirs and representatives, except one spring which was occupied by a squatter named McAfee, who was subsequently dispossessed in legal proceedings, another spring which had once been squatted upon and had afterwards been taken possession by some claimant or claimants under the alleged Bartolome Baca Grant. Mr. Story and I caused about ninety miles of fence to be erected upon the property soon after the said purchase, and also numerous buildings, corrals and other enclosures, and also caused wells to be sunk upon the property and windmills to be there established, and we conducted for years after our purchase a very large cattle ranch upon the premises. The expense of the improvements made under our title exceeded

the sum of thirty-four thousand dollars, and the taxes paid in the same right exceeded three thousand dollars.

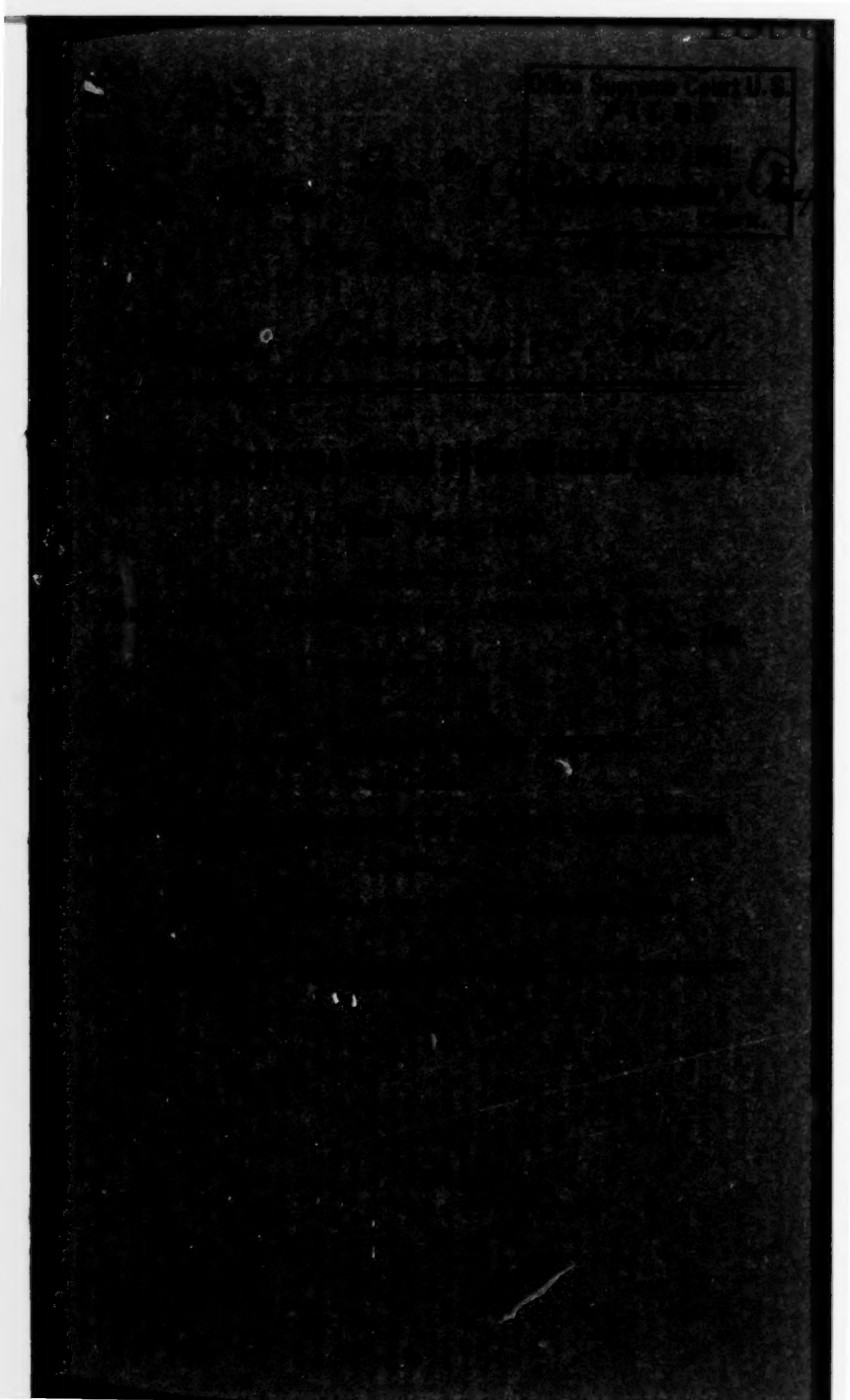
J. PARKER WHITNEY.

Subscribed and sworn to before me this 9th day of February, 1901.

THOMAS J. DOWNEN,
Notary Public in and for Pueblo County.

{ NOTARIAL SEAL }

My commission expires Nov. 16th, 1893.



In the Supreme Court of the United States.

OCTOBER TERM, 1900.

JOEL PARKER WHITNEY ET AL., APPELLANTS,
v.
THE UNITED STATES. } No. 133.

ESTANCIA GRANT IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

On March 1, 1893, the plaintiffs filed their petition in the Court of Private Land Claims, praying the confirmation of the claim commonly known and called the "Estancia grant," alleging the area thereof to be 415,036.56 acres. The petition sets forth with much detail the cause of action (R., 1–7), alleging, among other things:

That on the 7th day of December, 1845, Antonio Sandoval, a Mexican citizen of high distinction, who had theretofore for many years faithfully served the Republic of Mexico as a civil and military officer, and also greatly aided the Republic by loans and advances of large sums of money and of his private estate, for

which the said Republic was then his debtor, presented to Manuel Armijo, then the governor of New Mexico, and then authorized and commissioned by the supreme executive of the said Republic and by the laws of the said Republic to make grants, sales, and other dispositions of the public domain, his petition dated the 5th day of the same month, whereby he prayed the said governor, in the name of the supreme authority of the said Republic, to grant him in possession *integram* the Salt Lakes tract, assigning the boundaries; by which he represented to the governor that the tract was vacant and in a condition of mortmain, and that it would be without prejudice to any third party; that he wished to use the tract of land for the pasture of his live stock. It was further prayed that the said grant, if made, should be made free and exempt from tax.

That with the said petition the said Antonio Sandoval submitted to the said governor for his consideration an official certificate of Jose Serafin Ramirez y Casanoba, comptroller of the departmental treasury of New Mexico, and acting treasurer of the same, dated on the 6th day of the same month, whereby the said comptroller and acting treasurer certified that during the period of forty years (as appeared from records of the treasury) the said Antonio Sandoval had been serving the nation as a military and civil officer, and also that he had loaned numerous sums of money to the treasury of the nation without receiving one-half real interest, and that there were then large sums due him, as

appeared from the entries in the office of the said comptroller and treasurer and the evidence in possession of the said Antonio Sandoval, on account of salaries and loans.

That the said governor, in consideration of the said petition and certificate, and of the facts therein set forth, made, on the 7th day of December, A. D. 1845, in the name of the supreme Government of the Mexican nation, a grant to the said Antonio Sandoval of the land solicited by the said petition, with all the dimensions and pasture lands so asked for, and free and exempt from all tax or tribute, and the said governor, in his granting instrument or decree by which the said grant was so made, recited that the Government was convinced of the valuable services the said Antonio Sandoval had rendered and was then rendering to the country, as well during the time referred to by him in his said petition as also during the six years he served in the administration of the prefecture of the second district, with the salary of $1,500, of which not even a half real had been paid him, the sum due him amounting to $9,000; and he also adjudged and recited that the statements in the said petition were true, and he also declared that the said grant was a just title.

That thereupon, under the direction of the said governor and in conformity with the then existing laws, usages, and customs of the said republic, the proper judicial officer having jurisdiction in that behalf, namely, José Baca y Ortiz, justice of the peace of Real del Oro, delivered to the said Antonio Sandoval juridical seizin

and possession of the said tract of land on the 15th day of December, A. D. 1845, in obedience to the said decree, designating the boundaries:

On the north 1 league from the Berrendo Spring, the said spring being included in the possession; on the south 1 league from the Salt Lakes, the said lakes also being so included; on the east the little hills of the Pedernal, with the range thereof, and on the west the water of the Mesteñas.

That in testimony of his action in that behalf the judicial officer executed and delivered to the said grantee an act of juridical possession in the premises in due form of law that might serve him as formal title.

It is further alleged that Sandoval entered upon, possessed, occupied, improved, enjoyed, and claimed the same in fee simple and maintained thereon an armed force, adequate to the defense thereof, and continued his peaceable and exclusive occupation from the 15th day of December, 1845, until the 8th day of July, 1848, when he conveyed the same to his nephew, Gervacio Nolan, and transferred and delivered full seisin and possession.

That said possession continued in said Nolan and his heirs and legal representatives and those claiming under them, to and including the plaintiffs, from said date to the date of the filing of the petition in the Court of Private Land Claims, to wit, March 1, 1893.

It is also alleged that Gervacio Nolan, on July 12, 1855, presented his petition to the surveyor-general of New Mexico, praying a confirmation of said grant,

alleging that the grant was made by Governor Armijo to said Sandoval by virtue of authority in him vested by the Government of Mexico, "as will appear by the collection of statutes and decrees of the said Government, and also by communications addressed to the aforesaid governor by the authorities of the aforesaid Government of Mexico, and that the said communications are or should be deposited in the archives of the Territory of New Mexico, and to which he made reference."

That the said surveyor-general failed to act upon the petition of said Nolan, but, after the death of the latter, his widow and heirs renewed the same, and that their said petition was prepared and presented by Theodore D. Wheaton, who was then United States attorney for New Mexico, and familiar with the archives of the United States then kept in the city of Santa Fe; and in said petition the said Wheaton, as attorney for the widow and heirs, made the same allegations as to the existence in the archives of the laws and communications addressed to the governor as is made by counsel for the present claimants and appellants.

The spoliation and destruction of the archives subsequent to the appearance of United States Attorney Wheaton in behalf of the widow and heirs of Nolan renewing the claim made in 1855 by Gervacio Nolan, is alleged with much fictitious detail, particularly everything relative to the Estancia grant and the special communications to the governors of the department of New Mexico, especially those to Manuel Armijo.

Plaintiffs allege that they are in actual occupation and possession of the grant, under and by virtue of said grant and their acquisition thereof, except a comparatively small part thereof adversely held and claimed; that Eloisa Bergere and A. M. Bergere, for themselves and others unknown to the petitioners, and Mary T. Otero, Miguel A. Otero, Page Otero, Mamie J. Obrien and Harry J. Obrien are the only persons claiming said tract adverse to the petitioners and without their lease or permission.

The grant claimed is alleged to be a perfect title, and a complete and perfect title before and at the time of the cession of New Mexico to the United States.

It is alleged that said private land claim has not heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, except only that, having been submitted to the surveyor-general, the same was examined and approved by him and recommended to Congress for confirmation in his report as No. 70, dated January 4, 1873; and thereafter the said granted tract of land was surveyed by direction of the said surveyor, and the survey, plat, and field notes were approved by him. That subsequently the Hon. George W. Julian, surveyor-general, and the Hon. William A. J. Sparks, Commissioner of the General Land Office, promulgated adverse opinions on said private land claim, but they aver that said last opinions were not promulgated within the competency or jurisdiction of the said officials last named.

The petition concludes with the usual prayer for relief.

On October 27, 1893, Eloisa L. Bergere and the others named in the petition as codefendants with the United States filed their joint and several answer, in which they urged a number of defenses, among others that they were possessors adverse to the petitioners of the land sued for, and were such under and by virtue of what is known as the Bartolomé Baca grant alleged to have been made by Fecundo Melgares, governor of New Mexico, on July 2, 1819.

It is proper to state that at the time the petition was filed in this case Eloisa Bergere and others had pending in the Court of Private Land Claims a suit for the confirmation of said Bartolomé Baca grant, in which suit these plaintiffs were joined as codefendants with the United States by reason of the overlapping of the two grant claims. In the Bergere case the Court of Private Land Claims confirmed the grant (Bartolomé Baca grant) to the extent of 11 leagues, but upon an appeal by the claimants and cross-appeal by the United States the entire claim was rejected (*Bergere et al.* v. *United States*, 168 U. S., 66).

By reason of the disposition of that claim before the trial of this cause by the court below, the codefendants of the Government were eliminated from the present case.

On December 29, 1896, the United States joined issue by its amended answer (R., 15–23), disclaiming knowledge sufficient to enable it to form a belief as to whether the said Antonio Sandoval presented his petition to the governor of New Mexico as alleged, or

whether the same was accompanied by the papers set forth, or as to their tenor and effect, and as to whether on December 7, 1845, a grant was made of said lands to Sandoval upon the terms alleged, or whether the possession was given; but the United States averred that if said grant were attempted to be made as set forth in the petition, the same was without warrant or authority of law and in excess of the powers of the said Armijo as governor, and therefore void.

It is also asserted that if said grant was made as alleged, it was void for the further reason that it was not made in accordance with law or for the purposes provided by the then existing laws, but as a reward for services rendered and money advanced; and that even if said grant was attempted to be made otherwise in conformity with law, it was and is void for the reason that it assumed to convey a vastly greater quantity of land than said governor had authority to convey to any one person.

The answer also averred that the same Antonio Sandoval mentioned and referred to in said alleged grant did, on November 5, 1824, petition the authorities of the then Territory of New Mexico for a grant of 1 square league at the place called Agua Negra, and that on November 19, 1824, a grant of said 1 square league was made to him by the territorial deputation, by and with the advice and concurrence of the political chief, Bartolomé Baca; that a claim for said grant of land was filed by Antonio Sandoval on October 21, 1856, before the surveyor-general of New Mexico, and that the same was, on September 17, 1857,

approved by him and transmitted to Congress, as report No. 12, for its action in the premises; that on June 21, 1860, an act was passed by Congress confirming the said grant to the said Antonio Sandoval, which said act and that part relating to said grant is set forth in paragraph 3 of the amended answer. (R., 16, 17.)

The defendant further averred that the said Sandoval, on November 24, 1845, presented to the governor of New Mexico a petition for a grant of a certain large tract of land in New Mexico called the Bosque del Apache, the same exceeding 11 square leagues in extent; that on November 28, 1845, said grant was made to said Sandoval by Manuel Armijo, the then governor of the department of New Mexico, and juridical possession thereof was delivered to said Sandoval on March 7, 1846, and the amended answer then sets out *in extenso* a translation of said petition and the act of juridical possession (R., 17–19), a reference to which by this court is now desired.

That in 1859 the said Sandoval presented said grant to the surveyor-general of New Mexico for his approval, and on July 20, 1859, the same was by him transmitted to Congress as reported No. 35, for its action in the premises. That the grant was confirmed by an act of Congress approved June 21, 1860, to the said Antonio Sandoval, that portion of which pertinent to the grant being set forth in Paragraph III of the amended answer (R., 19). That the same as surveyed and patented pursuant to said confirmation contains 60,117.30 acres, being 11,292.91 acres in excess of 11 square leagues.

The answer further avers that, under the laws of Mexico at the date of the making of this (Estancia) grant, it was not permissible that more than 11 square leagues of land should be united as property in a single hand, and that the power and authority of the governor to make this grant, even if he had such, irrespective of this restriction, was exhausted by the making of the said Agua Negra and Bosque del Apache grants to said Sandoval, said two grants being in excess of 11 square leagues, and that therefore the grant sued on in this case is void.

The defendant admitted that said tract was surveyed as a private land claim, but denied that said survey correctly shows the extent and boundaries or that the area of said grant is 415,036.56 acres; but on the contrary asserted that the area included within the natural objects named in said grant, when the same were properly located, would not exceed half that amount.

The defendant admitted the conveyance by Sandoval to Nolan in 1848, and that upon his death the same descended to his heirs at law, by whom the same was claimed until 1880; also the allegations as to the presentation of the claim to the surveyor-general on July 12, 1855, and his failure to act upon the same until after the death of Nolan, and that after his death the same was renewed by his widow and heirs at law as alleged.

It was further asserted by the United States that while this claim was pending before the Surveyor-General there was pending before Congress, upon the

report of the Surveyor-General, a claim by the Nolan heirs for the confirmation of a grant for a large tract of land situate in the State of Colorado, which said grant was made to Gervacio Nolan by Governor Manuel Armijo, dated December 1, 1843, and possession given by Cornelio Vigil, justice of the peace of Taos, on December 15, 1843; that under the provisions of the act of July 22, 1854, creating the office of surveyor-general for New Mexico, Kansas, and Nebraska, said claim was recommended to Congress for confirmation as reported No. 48; that said claim was thereafter confirmed by Congress by act of July 1, 1870, to the extent of 11 square leagues, which said act, in so far as it relates to said grant, is set forth in paragraph V of the amended answer (R., 21–22). That the land confirmed by said act was duly surveyed and patented under the provisions thereof to the extent of 11 square leagues. It was therefore alleged that the plaintiffs were not entitled to a confirmation of any portion of the land claimed in this suit, for that the said act of July 1, 1870, was a final adjudication on the part of the Congress of the United States of the rights of said Gervacio Nolan or his heirs and representatives in and to all private land claims under the treaty of Guadalupe Hidalgo.

The truth of all the allegations of the petition not specifically answered was generally denied, and it was prayed that the plaintiffs be put to strict proof of the same according to the provisions of the act creative of the Court of Private Land Claims.

On December 14, 1898, the cause came on for trial, at which time the plaintiffs introduced in evidence their muniments of title and filed translations of the same (R., 41–46), objection being made on behalf of the United States to their introduction because they were produced from private hands and did not purport to be *testimonios;* neither did they show in themselves nor was any evidence introduced that said attempted disposition had ever been made a matter of record in the archives of the department of New Mexico; nor was any connection shown with the record, or that the archives containing any reference to the same had been lost or destroyed. It was further objected that the genuineness of the signature of the alcalde to the act of possession had not been established; also because the Spanish title papers, consisting of the petition of Antonio Sandoval, the marginal order or decree of Governor Armijo, and the act of possession by the alcalde, Jose Baca y Ortiz, purporting to be originals, are not in proper custody, nor are their absence from the archives and their being in the custody of the plaintiffs accounted for, even if they had ever been in the archives. (R., 27.)

The petition filed by Nolan before the surveyor-general under the act of 1854, claiming the said grant, was also introduced. (R., 40–41.)

Also the petition of the widow and heirs of Nolan renewing the claim. (R., 48–49.)

Also the decision of the surveyor-general upon the same and his recommendation to Congress. (R., 51.)

Other instruments were introduced tending to show

that the plaintiffs had acquired such interest in the claim as enabled them to invoke the jurisdiction of the court.

There was considerable evidence introduced showing the spoliation and destruction of the archives of New Mexico in 1870 during the administration of Governor Pile. It is admitted that in the year 1870 the records in the possession of the secretary of the Territory were subjected to spoliation and destruction to a considerable extent, but it is suggested that nothing in the testimony or history of the Territory tends in any way to show that this grant was ever recorded or returned for that purpose, or that the evidence of such record was lost or destroyed during 1870 or any other time.

The United States tendered in evidence the supplemental report of Surveyor-General Julian (R., 62–66); also the report of the Commissioner of the General Land Office to Congress (R., 66–71), in relation to the grant.

The Government also offered in evidence a number of instruments from the office of the Surveyor-General, showing the claims made and the action of the political branch of the Government upon the Agua Negra and Bosque del Apache grants, confirmed to Antonio Sandoval, as particularly recited in its amended answer.

Counsel for the plaintiffs admitted that the statements of fact contained in these documents, and the allegations in the answer of the United States respecting them, were true, but as to their legal effect or like

conclusions to be drawn therefrom, no admission was made.

Production of the patents and surveys were waived, and it was admitted that the Bosque del Apache grant was patented in conformity with the report of the surveyor-general and the confirmation; but plaintiff's counsel, under his previous reservation, assigned the following objections to the instruments and proceedings tendered in evidence under said confirmation:

That the said instruments and proceedings are irrelevant, immaterial, and incompetent; that the Bosque del Apache grant was one in colonization and exceeded the powers of the governor under the law of colonization; that the Estancia grant, now in question, was not a grant in colonization; that the proceedings looking to the confirmation of the Bosque del Apache grant by this Government were subsequent to the transfer of the Estancia grant to Gervacio Nolan; at the same time expressly disclaiming any objection to the form or mode of proof of the instruments referred to.

The defendant introduced a number of documents tending to sustain the averments of the fifth paragraph of its amended answer and to the effect that a claim was presented by the heirs of Gervacio Nolan to the surveyor-general on October 2, 1860, praying the confirmation of a grant of a large tract of land alleged to have been made to him by Governor Armijo on December 1, 1843; as also the report of the surveyor-general, dated October 8, 1861, approving the same and recommending it to Congress for confirmation as reported No. 48, which grant was confirmed by act of Congress

approved July 1, 1870, to the extent of 11 square leagues, with certain provisos (16 Stat L., 646); and that the said grant was surveyed and patented to the extent stated according to the report and confirmation. The production and entry of the survey and patent in the record was expressly waived, as well as all objections as to form or mode of proof of any of said instruments, but the plaintiff reserved the following objections: That said instruments are irrelevant, immaterial, and incompetent; that the Estancia grant, now in question, was vested in the grantee and his assigns as a complete title, and it was not within the intent or constitutional power of Congress to divest that title by any provisos contained in the act confirming the Nolan grant, and that in fact the said act did not even presume to interfere with any prior vested title (R., 39). Counsel expressly waived objection to the form or mode of proof, and waived the production of the patent and survey.

It was also admitted by the plaintiff that the Antonio Sandoval and the Gervacio Nolan, referred to in these various proceedings, are the identical persons mentioned in the evidence on the part of the plaintiffs.

The Court of Private Land Claims, after elaborate arguments by counsel, rejected the claim and dismissed the petition. The claimants in due time appealed the cause to this court.

It was conceded in the court below by counsel for claimants that the grant was not made under the colonization law of August 18, 1824, and the regulations of November 21, 1828, as they had been repealed. It

was also admitted that the grant derived no validity from the laws passed subsequent to the constitution of 1836 under the policy declared by that of April 4, 1837.

As the majority opinion by Mr. Justice Sluss (R., 95–100) holds that the colonization law of 1824 and the regulations of 1828 were in force in New Mexico in the year 1845, notwithstanding the complete change of the policy of the Government in 1836 and the declaration in the law of April 4, 1837, that colonization should be made effective by sales, leases, or mortgages (Reynolds Spanish and Mexican Land Laws, 222), and as Mr. Justice Murray in his opinion (R., 102–112) assumes a position entirely opposite, holding that the law of 1824 and the regulations of 1828 were repealed and superseded by the latter policy and the laws enacted for its execution, it is thought proper to consider this case in the different attitudes suggested by the varying views of the Court of Private Land Claims, although the ultimate unanimity was attained that the grant should be rejected.

The United States does not insist on the defense set up in paragraph 5 of its amended answer (R., 21–22), under the provisos contained in section 5 of the act of July 1, 1870 (R., 22), confirming to the heirs of Gervacio Nolan 11 leagues of a grant made to Gervacio Nolan by Governor Armijo in 1843. Although the proviso is extremely broad, counsel does not believe it was the intention of Congress to deprive Nolan or his heirs of any rights they may have acquired by purchase in a grant made to Antonio Sandoval, although

at the time a claim by the heirs of Nolan was pending before Congress for confirmation of this grant, which they claimed through Nolan, who had held by purchase from Sandoval, the original grantee, but only intended to satisfy by said act of confirmation of July 1, 1870, all claims arising out of Armijo's liberal exercise of his assumed granting power in behalf of their ancestor, Gervacio Nolan.

I.

Assuming for the present that the colonization law of August 18, 1824, and the executive regulations of November 21, 1828, were in force in New Mexico in 1845, still this claim does "not appear to be upon a title lawfully and regularly derived from the Government of * * * Mexico," and under the authority of the cases of *United States* v. *Ortiz* (176 U. S., 422) and *United States* v. *Elder* (177 U. S., 104), and the California cases therein cited, it can derive no validity from such law and regulations.

The genuineness of the signature of the alcalde, José Baca, to the act of possession dated December 15, 1845, was not proven. The muniments of title, consisting of the petition of Sandoval, the certificate of the comptroller and ex officio treasurer of the department, the grant by the governor, and the act of posession were produced from the custody of the claimants, and no evidence or explanation was offered of the circumstances of their custody, nor tending to show that the same had ever been returned for record in the

archives of the department, nor that they had been recorded and the record thereof lost or destroyed. No connection was shown between the grant and the records of the department, while it was shown by Mr Tipton that he had "never seen a record in the sense of a book containing grants or memoranda of grants made by Governor Armijo; but as to whether there are any grants purporting to have been made by him among those papers which are called archives in the surveyor-general's office in distinction from private land claims filed there I am not perfectly certain, although I do not recollect ever having seen any such." (R., 32.)

It will be noticed that the grant in this case bears the indorsement: "Recorded in book letter B, pages 166 and 167, to which I certify that it may so appear. Donaciano Vigil, Recorder. Santa Fe, November 17, 1849." (R., 43, 46.)

Book B was a record provided for by the Kearny Code, and was an attempt on the part of the provisional and military government established by General Kearny to enable the inhabitants to preserve some evidence of their holding instruments of various kinds relating to lands and many other subjects. The fact of this indorsement clearly shows that the muniments of title to this grant were in private custody at that date.

The signatures of Sandoval and Governor Armijo, although shown by the testimony of Mr. Tipton to be genuine, he was unable to verify that of José Baca to the act of possession. Nor was the signature of José

Serafín Ramírez to the certificate of indebtedness proven (R., 45).

It has often been judicially declared to be part of the system of all well-regulated governments to preserve record evidence of all grants of the public domain, thus enabling the Government to ascertain with accuracy what portions had been disposed of; and as a protection against fraud and imposition, "the record was the grant, and without it the title was not divested" (*Peralta* v. *United States*, 3 Wall., 334, 440; *United States* v. *Elder*, 177 U. S., 104, 116).

Where the grant produced can not be verified by such test, although the genuineness of the various signatures may be established, the courts, before recognizing the validity of the claim, will scrutinize with extreme care any circumstance tending to throw any light upon the transaction "both as to the authority of the governor to make them and the *bona fides* of its exercise, to prevent imposition and fraud."

The only evidence of possession is such as flows from the presumption predicated upon the recitals in the act of possession by Alcalde José Baca, designating himself in the body of the same as José Baca y Ortiz. As the execution of this instrument has not been proven, it would seem quite necessary, as all muniments of title were produced from the custody of the claimants, and no connection shown with the records, that the character and extent of the possession be clearly shown.

It was alleged that a comparatively small part of

the land claimed was adversely held and claimed by Eloisa Bergere and A. M. Bergere, her husband, for themselves and others named.

It was held in the recent case of *United States* v. *Ortiz* (176 U. S., 422, 425), from Court of Private Land Claims, upon an unrecorded grant by Governor Armijo made in 1846, that—

> The statute authorizes no presumption in favor of genuineness of a title from the mere fact that the claimant for confirmation presents a paper which is asserted to be a grant from a Mexican official. The command of the statute is not that the United States, when an alleged Mexican title is presented for confirmation, shall be put to the burden of showing that the title in question is not genuine, but that the evidence present in favor of the asserted title shall be of such persuasive and preponderating force as to convince the court that the title is real, and besides, possesses the legal attributes which the statute requires as essential to confirmation. * * * The law cast, primarily, upon the applicant for confirmation the duty of tendering such proof as to the existence, regularity, and archive record of the grant, as well as his connection with it, such as possession, ownership, and other related incidents, of sufficient probative force to create a just inference as to the reality and validity of the grant, before the burden of proof, if at all, can be shifted from the claimant to the United States.

It was alleged and proven that just a few days prior to the making of this grant by Governor Armijo,

he made to Antonio Sandoval, the grantee in this case, another grant to the Bosque del Apache tract, containing over 60,000 acres, which was recognized by this Government and confirmed to its full extent by Congress by act approved July 20, 1860 (reported No. 35).

It will be noticed that the petition of Sandoval was dated November 24, 1845 (R., 82), just eleven days prior to the date of his petition for this grant, December 5, 18 5 (R., 44); that the granting order of Governor Armijo for the Bosque del Apache grant was dated on November 28, 1845 (R., 82, 83), just ten days prior to the date of the granting order in this case, December 7, 1845 (R., 44, 45). It appears, however, that the act of possession by the alcalde, Vincente Pino, was not executed until March 7, 1846 (R., 3, 84), while the act of possession for the grant in controversy appears to have been executed by José Baca on December 15, 1845 (R., 45, 46).

The close proximity of the dates of these two grants must have been a matter attracting the attention of Governor Armijo. The consideration for and the express exemptions accorded both grants in the orders of the governor are the same, viz:

> *Bosque del Apache grant*, dated November 28, 1845, meritorious services rendered the country personally, with his property in forced loans and in other ways, the same to be free from all and exempt from tax. (R., 82-83.) 60,117.30 acres.

Estancia grant (now in controversy), dated December 7, 1845, valuable services that he has rendered and is now rendering, and the sum now due him being $9,000.00. (R., 44-45.) 415.036.56 acres.

The Agua Negra grant was made to Antonio Sandoval on November 19, 1824, by the territorial deputation, and possession given on December 5, 1824. This grant was recognized and confirmed for 1 square league, or 4,338.46 acres, by act of Congress approved June 21, 1860 (reported No. 12).

It appears by the evidence that this Government has recognized and confirmed to Sandoval's legal representatives 64,455.76 acres of land, and the question fairly presents itself, Has not the United States about satisfied all of its obligations to Sandoval under the treaty? This case stands upon a claim barren of any equities and appealing to no sense of justice for favorable recognition.

The rights acquired by the claimants are only such as Antonio Sandoval had at the date of the treaty. The case rests upon a bare paper title at best, and the observations of this court in *Peralta* v. *United States* (3 Wall, 440), that "written documentary evidence, no matter how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence existed;" or, as suggested in the case of *United States* v. *Teschmacher* (22 How., 405), "we do not say that the absence of the record evidence is of itself necessarily fatal to the

proof of title, but it should be produced or its absence accounted for to the satisfaction of the court."

If the records have been lost or destroyed, some connection should be shown between the grant and the lost records. The original cases announcing this doctrine have been cited with approval in the recent case of *United States* v. *Ortiz* (176 U. S., 422).

Standing upon a bare paper title, it is not believed that this grant has been established by full legal proof "of such persuasive and preponderating force as to convince the court that the title is real, and besides possesses the legal attributes which the statute requires as essential to confirmation." (*United States* v. *Ortiz*, *supra.*)

If we discard the express consideration for this grant, and assume that the act of Governor Armijo might possess some validity by reason of the limited power conferred by the law of 1824 and the regulations of 1828, yet by making the grant to Antonio Sandoval of the Bosque del Apache tract, on November 28, 1845, for 60,117.36 acres, which was 11,292.91 acres in excess of 11 square leagues, the governor exhausted his power to favor Sandoval, and the recognition by the United States of this previous grant satisfied all the obligations which this Government assumed under the treaty toward him or those standing in his shoes. Vide *United States* v. *Hartnell's Executors* (22 How., 286); *Rowland* v. *United States* (7 Wall., 743, 750).

It was held in the case of *Fuentes* v. *United States* (22 How., 443, 454) that the "Act of 1824 and the regulations of 1828 are limitations upon the power of

the governor to make grants of land. *They are, and were also considered to be, directions to petitioners for lands before they could get titles.*"

So that, whether in 1845 the colonization law of 1824 and the regulations of 1828 were in force in New Mexico or not, it is clear this grant can not be sustained under them, and the appellants must look elsewhere for authority in Governor Armijo to make their grant.

This branch of the case is elaborately discussed in the opinion of Surveyor-General Julian (R., 62–66) and the Commissioner of the General Land Office (R., 66–71).

II.

Believing this claim can derive no validity from the law of 1824 and the regulations of 1828, nor from the laws on colonization passed under the constitution of 1836, yet, if neither was in force in 1845, it can not be admitted or conceded that the grant can be sustained by reason of any special order, decree, or communication from the supreme executive, for that no evidence was tendered of their issuance, nor as to their character or purport. While the court will take judicial notice of the general laws, still all special orders and communications must be affirmatively proved.

This consistently carries us to the position taken by appellants' counsel in the court below, viz:

That this grant was not one under the colonization law of 1824 and the regulations of 1828; that they were not in force at the date of the grant, having been

repealed by the change in the form of government from a territory to a department in 1836, and especially by the laws adopted shortly after that time for the greater security of the national debt. And, as a consequence of this condition, the contention was naturally made by appellants' counsel that the limitation contained in the colonization law of 1824 that not more than 11 square leagues could be granted by the governor to one individual was not in force at the date of this grant, and hence, even if Antonio Sandoval had previously received other grants under the colonization law, exceeding in amount 11 square leagues, the restriction imposed therein, had no bearing in the present case. Further, that the existence in New Mexico, at the time of this grant, of an authoritative granting officer invested with the prerogatives of the sovereign, being in fact an arm of the national sovereignty, is to be assumed from the attempted exercise of that superior function in making this grant, and the indulgence of such a presumption in this case leads to the conclusion that Governor Armijo was not only authorized to make this grant to Sandoval, notwithstanding the fact that he had, only ten days before, made him another grant for over 60,000 acres, but that he was authorized to make a grant to Sandoval for any quantity which he might see fit; again, that Armijo's action was evidently no abuse of this power, since it was shown that the departmental government of New Mexico was indebted to Sandoval in large amounts.

In so bounteously and gratuitously delegating the supreme power of the *national* government to departmental officials who, by the very nature and essence of the political plan then in being, were constitutionally restricted in the exercise of their functions, counsel for appellants attempts to find his license in the doctrine promulgated in the Louisiana and Florida cases, especially those of *United States* v. *Arredondo* (6 Peters, 691), *Perchman* v. *United States* (7 Peters, 51), *United States* v. *Clarke* (8 Peters, 436), *De Lassus* v. *United States* (9 Peters, 117), and *Strother* v. *Lucas* (12 Peters, 410), which, as stated in the latter case, is that:

> Where the act of an officer to pass the title to land according to Spanish law is done contrary to the written order of the King, produced at the trial without explanation, it will be presumed that the power has not been exceeded, and that it was done according to some order known to the King and his officers, though not to the subjects, and courts ought to require very full proof that he transcended his powers before they so determine. (P. 438.)

Mr. Justice McKenna said, in the case of *United States* v. *Coe* (170 U. S., 681), citing *United States* v. *Cambuston* (20 Howard, 59), that "these principles were asserted of Spanish titles in the Territories of Louisiana and Florida. They are disputable in their application to titles under Mexican laws."

Such a principle as is sought to be invoked in this case by counsel for appellants was of permissible application under the private land claim acts from 1803 to 1828, and the reasons therefor were fully con-

sidered in the *Arredondo case* (6 Peters, 719–726). And in deciding that case, after separately considering the provisions of each act relating to the rules of decision laid down by Congress for the guidance of the commissions, the court summed up the result of all legislation *in pari materia* at the time as follows (p. 727):

> It is thus clearly evidenced by the acts, the words, and intentions of the legislature, that in considering these claims by the special tribunals, the authority of the officer making the grant, or other evidence of claim to lands, formed no item in the title it conferred; that the United States never made that a point in issue between them and the claimants to be even considered, much less adjudicated.

The impropriety of the application of such principle to claims arising under the act of March 3, 1891, creating the Court of Private Land Claims, was considered in the opinion of Mr. Justice White in *Hayes* v. *United States* (170 U. S., 637, 647–649), and in discussing the the prohibition contained in the first subdivision of the thirteenth section of that act, he said:

> That court and this court on appeal are expressly prohibited from allowing any claim under the act "that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land." This manifest limitation upon the power of the court in passing upon the validity of an alleged complete grant requires that the court shall not

> adjudge in favor of validity unless satisfied from the inherent evidence contained in the grant, or otherwise, of an essential prerequisite to validity, viz, the authority of the granting officer or body to convey the public domain.
>
> In this respect the act of 1891 is materially different from the statutes construed in the *Arredondo case* (6 Peters, 691). * * * But in the act of 1891 the court is required to be satisfied, not simply as to the regularity *in form*, but it is made essential before a grant can be held legally valid that it must appear that the title was "lawfully and regularly *derived*," which imports that the court must be satisfied from all the evidence that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently ratified.
>
> Controlled, as we are, by the grant of power conferred by the act of Congress, we are unable, when the record discloses that the grant was not "lawfully and regularly derived * * * from any State of the Republic of Mexico having authority to make grants," to hold that it should nevertheless be confirmed because, although the proof convincingly shows that the grant does not not conform to the requirements of the act of Congress, the grant yet must be held valid because of a supposed legal presumption.

Independent of laws providing rules of decision in these cases and the pertinency of the application of such a presumptive principle in the consideration of grants made by royal officers possessing vice-regal

authority, its appropriateness is broadly denied when applied to claims arising under the laws of a popular government existing solely by virtue of the constitution; especially is this true in view of the fact that Mexico, "after its separation from Spain in 1821, was asserting to act as a republic, subject to express constitutional limitations. While temporary departures are disclosed in her history, the dominant and continuous thought was of a popular government under a constitution which defined rights, duties, and powers." (*Camou* v. *United States*, 171 U. S., 277, 290.)

In a government by law the powers of all its officials are derivative. The law measures the power. Its executives are creatures of the law and their powers are measured thereby. It would be portentous indeed if the courts for an instant departed from the principle that the United States, and as well the Republic of Mexico, are governments by law and that "no man in this country is so high that he is above the law; no officer of the law may set that law at defiance with impunity; all the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it." (*United States* v. *Lee*, 106 U. S., 196, 209.)

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

O

No. 133.

Sup. Ct. Bf. of Atty. Genl (Richards & Reynolds) for U. S.

Filed March 1, 1901.

Office Supreme Court U.S.
FILED
MAR 2 1901
Clerk.

In the Supreme Court of the United States.

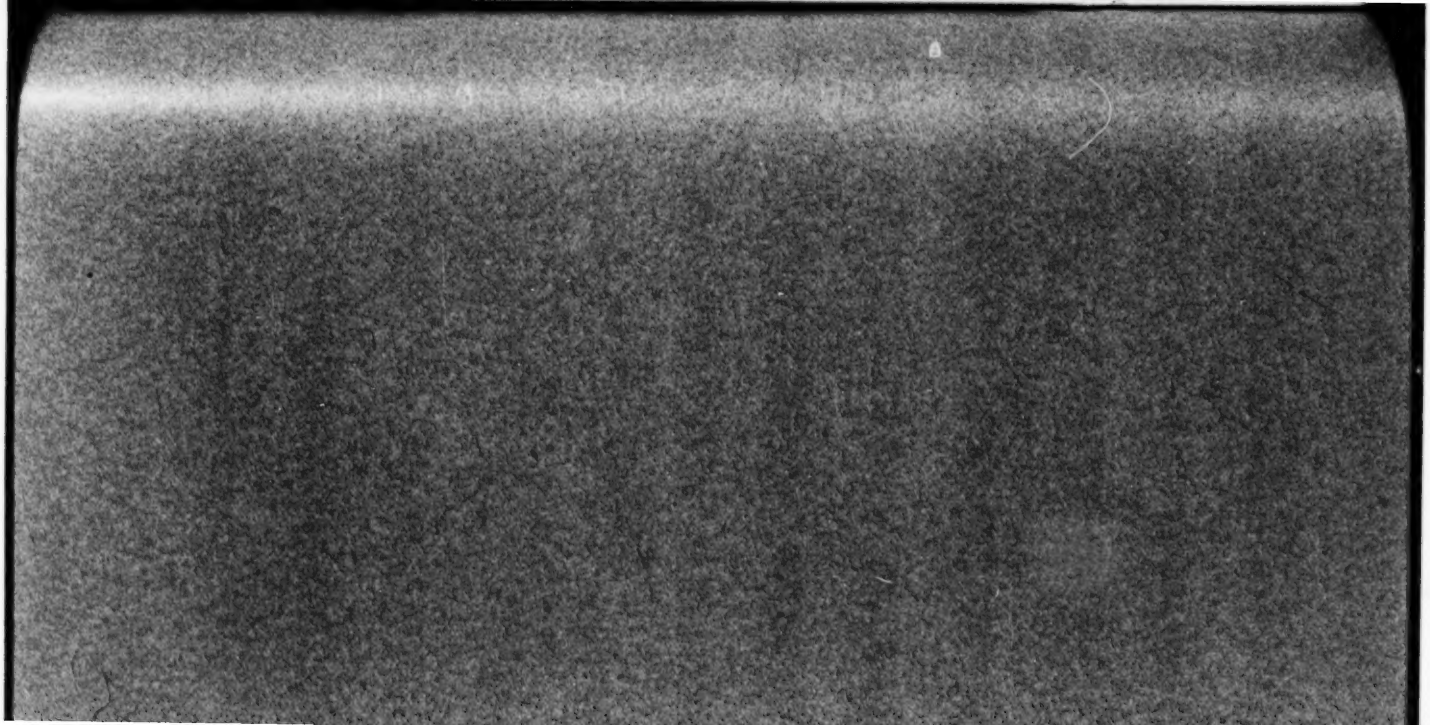
OCTOBER TERM, 1900.

JOEL PARKER WHITNEY ET AL., APPELLANTS,
v.
THE UNITED STATES ET AL. } No. 133.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

ESTANCIA GRANT IN NEW MEXICO.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES.



In the Supreme Court of the United States.

OCTOBER TERM, 1900.

JOEL PARKER WHITNEY ET AL., APPELLANTS,
v.
THE UNITED STATES ET AL. } No. 133.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

ESTANCIA GRANT IN NEW MEXICO.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES.

Since filing the original brief of the Government, its counsel have had courteously placed in their hands a copy of the brief of the opposing counsel. Its ingenious and elaborate argument, by which is sought to be established the principle that the governor of New Mexico, on December 7, 1845, possessed powers and prerogatives of an absolute and dictatorial nature, not only for the disposition of the public lands, but generally as to all matters military, fiscal, and of other executive provinces (and, inferentially, also legislative and judicial), has suggested a reply which it will be the endeavor to confine to our conception of the effect of the laws by which limitations were clearly placed upon departmental assemblies and governors.

The powers specifically claimed for Governor Armijo are best stated in the language of counsel himself, viz:

> Manuel Armijo, as governor and commandant general of that department, was the trusted minister and agent of the quasi dictatorial Supreme Executive of Mexico, and duly acted as such in making the grant in the name of the Supreme Government, and was not restricted by any prescribed rules or limitations. (Appellants' brief, p. 82.)

No more absolute power over the disposition of the vacant public lands, the property of the nation, can well be stated, and upon the sustaining of which alone can counsel hope to cross the first barrier erected by Congress in the creative act of March 3, 1891, that "no claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land." (Section 13, subsection first.)

It is open to serious question whether the Supreme Executive of the Mexican Nation ever possessed such absolute and dictatorial powers. Indeed, they were never delegated to him by any law, constitution or provisional constitution, much less was authorized their subdelegation to a petty departmental governor or local military commander.

The contention that there reposed in the Supreme Executive absolute, arbitrary, and dictatorial powers is fatally vitiated by the opinion of this court in the

Camou Case (171 U. S., 277, 290). The Government's counsel in that case endeavored with much effort to induce the court to clothe with such prerogatives Santa Anna, dictator *de facto* during one of "the occasional interruptions of constitutional government," feeling fortified in this undertaking by the fact that the United States had recognized that dictator in negotiating with and purchasing from him the territory within the Gadsden purchase; but even under these persuasive circumstances the court declined to acquiesce in this view, and applied restrictions incident to "a popular government under a constitution which defined rights, duties, and powers." How vain, then, it seems for counsel to make a similar plea for the subdelegate of this same dictator, Santa Anna, who had upon June 13, 1843, promulgated a new constitutional plan called "Bases Organicas." (Comp. Laws, Vol. IV, p. 429, No. 2576; Reynolds, 243–248.) This new or provisional constitution defined "rights, duties, and powers," particularly those to be exercised by the departmental assemblies and governors, and excepted no department from their operation.

The forceful argument of counsel, however, if of no more serious influence, at least calls forth a sympathetic gratitude for such an able exploitation of a contention upon the success of which once depended what is now a "lost cause."

These spasmodic and revolutionary departures in orderly constitutional form of government were occasioned more by the desire to displace one set of officials

with another rather than to overturn and supplant a constitutional government by one in which the will and pleasure of the supreme head became the law. The purpose of achieving independence was to bring the country under a government by the people. They had suffered much in their personal and property rights at the hands of major and petty officials, and the dominant thought was to bring them all under constitutional law "which defined rights, duties, and powers." The conferring of rights by the violation of such principle imposed no obligation upon the country to respect them, and the Supreme Executive was not exempt from its restrictions

In numerous cases heretofore submitted to this court, counsel for the Government have submitted briefs upon the effect of the laws of the Republic relative to the disposition of the public lands, passed subsequent to the adoption of the constitution of 1836, notably in the following Arizona cases:

Ainsa, administrator, v. *United States* (161 U. S., 209).

United States v. *Coe* (170 U. S., 681; s. c. 174, U. S., 518).

Ely's administrators v. *United States* (171 U. S., 220).

Faxon v. *United States* (171 U. S., 244).

Camou v. *United States* (171 U. S., 277).

And specially in the following cases from New Mexico:

United States v. *Ortiz* (176 U. S., 422).

United States v. *Elder* (177 U. S., 244).

The latter case was determined upon other grounds, and the laws in force and the powers of governors and departmental assemblies were not passed upon.

Counsel seems to rely much upon article 141 of the Bases Organicas as establishing Governor Armijo as the confidential agent of the supreme executive, hence secretly clothed with supreme dictatorial powers. It is as follows (Reynolds, 247):

> The governors are the only and necessary conduct of communication with the supreme authorities of the Republic. The cases of accusation or complaint against themselves and the official correspondence of the superior tribunals with the supreme court of justice in judicial matters are excepted.

Whatever administrative functions the chief executive may have conferred upon Armijo, and of these we have no information, yet the very "Bases Organicas," which have been treated as a provisional constition, specifically recognizes that the country did not lapse into absolute dictatorship even in the many rapid and revolutionary changes of chief executives.

In determining the laws for the departments, and defining the powers and duties of the departmental assemblies and governors, Section V of article 134 of the "Bases Organicas" provides, in relation to departmental assemblies (Reynolds, 244):

> To decree what is convenient and in harmony with the laws with respect to the acquisition, alienation, and exchange of the property (bienes) that may belong to the community of the Department. *As to the alienation of lands* (*terrenos*), *the*

existing laws and what the colonization laws provide shall be observed.

Hence, in view of this provision, it is going too far to say that there was no law of the Republic for the disposition of the public lands which the centralized government or the chief executive recognized.

While it may be impossible to determine whether the laws of the Republic passed in pursuance of the declaration of the act of April 4, 1837, or the colonization law of August 18, 1824, or both, were intended by the clause, "as to the alienation of lands (terrenos), *the existing laws* and what *the colonization laws provide shall be observed*," it is nevertheless patent that the two grants made by Armijo to Sandoval in November and December, 1845 (to wit, the Bosque del Apache and Estancia), complied with neither, and appellants' counsel is compelled to rely upon the presumptive authority from the supposed continued and repeated exercise of the sovereign power to dispose of the public domain. An examination of the records relative to this alleged custom on the part of Armijo does not furnish foundation for this contention of counsel.

In the case of *Chavez* v. *United States* (175 U. S. 552), the Government caused to be compiled from the records and reports, by Mr. Tipton, special agent of the Department of Justice, an abstract showing the extent and under what circumstances the vacant public lands in New Mexico were disposed of, from independence in 1821 up to the time of the American occupation in 1846, and the following statement showing the

grants made by Governor Armijo, with some additional comment, is excerpted from that abstract:

October 16, 1837. The Alvarez grant. By Manuel Armijo, governor of New Mexico. Reported No., 143. Suit No. 231 in the Court of Private Land Claims. Rejected by Court of Private Land Claims October 5, 1898.

This was a grant made to one individual, who, in petition for it, stated his object to be the raising of stock, principally sheep, which he expected to improve by the introduction of Merinos; and the grant was made to him upon a condition suggested by himself, that within three years he was to carry into effect the enterprise of raising Merino sheep. Possession of a large tract within certain natural boundaries was given the applicant by an aicalde, but it is understood that the condition imposed by the governor was never fulfilled. There is no evidence in the case that the grant was an allotment under a prior grant or that its object was anything more than above indicated.

March 14, 1838. The Jose Sutton grant. By Manuel Armijo, governor of New Mexico. Reported No., 45. Suit No. 143 in Court of Private Land Claims. Rejected by Court of Private Land Claims December 20, 1898.

This was a grant made to one person for a tract of land 16 square Spanish leagues, or more than 69,000 acres, for the purpose of constructing thereon, within three years from the date of being placed in possession, a factory of ordinary woolen fabrics and commencing the raising of Merino sheep. The grantee was to be placed in

possession whenever he saw fit, but he never applied to anyone to place him in possession, and failed to fulfill any condition attached to the grant. It was an absolute grant upon the conditions described.

(House Ex. Doc. 112, Thirty-seventh Congress, second session, p. 4.)

March 22, 1839. Sanguijuela grant. By Santiago Ulibarri, constitutional alcalde of San Miguel del Vado. Alleged to have been approved by Manuel Armijo, governor of New Mexico, on May 8, 1842, and granted anew by him on October 3, 1843. Suit No. 170 in Court of Private Land Claims. Rejected by Court of Private Land Claims June 7, 1898.

This grant was made in 1839 to five persons, who, in their petition therefor, stated it was within the boundaries of the Las Vegas grant. The alcalde, in making the grant, stated that the petitioners should observe and comply with all the requirements that the law of colonization prescribed. The Court of Private Land Claims, in rejecting the grant, did so on the ground that the title papers presented were inadmissible as evidence. It does not appear that this grant was intended as an allotment under the grant to the town of Las Vegas, but rather it was made by the exercise of that power of control and disposition over lands assigned to a town, but undisposed of, which was frequently employed under the Mexican Government in New Mexico, where the granting of lands within the outboundaries which had been assigned to a town or community would not result in injury to the latter.

March 23, 1840. Juan Salas or Los Alamitos grant. By Governor Manuel Armijo. Reported No., 69. Suits 91 and 183 in Court of Private Land Claims.

This grant was made for purposes of cultivation to twelve persons, to each of whom an instrument was given describing the allotment of which he became the owner; but this was not done until Governor Armijo had submitted the petition to the common council of Santa Fe, which made thereon favorable report. And it appears from the whole proceeding that while the lands granted and allotted were not within the boundaries of any grant of which they were acknowledged to be a part, they were within the Territory over which the common council of ayuntamiento of Santa Fe exercised some sort of control. The cultivated lands were to be fenced as a protection against stock belonging to the people of the city of Santa Fe and vicinity.

(Senate Ex. Doc. 37, Forty-second Congress, third session, p. 10.)

This grant was confirmed by the Court of Private Land Claims to the extent that it did not conflict with the Juan Lopez grant, theretofore confirmed by Congress. The Government appealed, and it was discovered that only a small portion of the grant lay outside of the patented Juan Lopez grant, whereupon the appeal was dismissed by stipulation.

The next grant made by Governor Armijo was the celebrated Maxwell grant, made January 11, 1841. Reported No., 15. Confirmed by Congress June 21,

1860 (House report 457, Thirty-fifth Congress, first session, p. 237). This grant was before this court (121 U. S., 325), and on motion for rehearing (122 U. S., 365), the court held that it was an *empresario* grant, although the decision was based upon the action of Congress confirming the grant according to the report of the surveyor-general, recommending confirmation to the full extent of the boundaries claimed. This grant has been referred to by counsel as one of the evidences of the exercise of Armijo's arbitrary power and unlimited disposition of the public lands.

March 20, 1841. Town of Chilili grant. By Governor Manuel Armijo. Reported No. 11. Confirmed by Congress December 23, 1858.

This was a grant to twenty-seven persons of a tract of land described by natural objects within which the petitioners, who are referred to as colonists, were to be allotted portions of the tillable lands. The settlement made under this grant was the foundation of the present town of Chilili.

(House report 457, Thirty-fifth Congress, first session, p. 182.)

December 1, 1843. Rio de Don Carlos or Gervasio Nolan grant. By Manuel Armijo, governor of the department of New Mexico. Reported No. 48. Confirmed by Congress July 1, 1870. (House Ex. Doc. 112, Fifty-seventh Congress, second session, p. 30.)

Situate in the State of Colorado. This grant was apparently made to Gervasio Nolan alone, although in his petition he stated that it was

his intention to settle thereon, cultivate it, put stock on it, and establish a colony; and in his request to the justice of the peace to be placed in possession he says, "the governor of the department having donated us," etc., which indicates that although unnamed in the proceedings, there were persons whom the petitioner considered in some way associated with him in the grant, although he alone was named.

The next was the Las Animas or Vigil and St. Vrain grant, made by Governor Armijo, December 9, 1843, of about 4,000,000 acres, and was confirmed by Congress on June 21, 1860, to the extent of 22 square leagues. This was evidently an *empresario* grant, so understood by Congress and so appears on its face (House report 457, Thirty-fifth Congress, first session, p. 269). This grant was before this court in the present term in the case of the *Las Animas Land Grant Company* v. *The United States*, and the decision of the Court of Private Land Claims, to the effect that the action of Congress in confirming the grant to the extent of 22 leagues was a final action upon the claim by Congress, and therefore within the prohibition of jurisdiction contained in the creative act of March 3, 1891, was affirmed. This is another one of the grants referred to by counsel as evidence of the arbitrary disposition of the vacant public lands by Armijo.

The next is:

> December 30, 1843. Sangre de Cristo grant. By Governor Manuel Armijo. Reported No., 4. Confirmed by Congress June 21, 1860. (Senate Ex. Doc. 141, Forty-seventh Congress, first session, p. 13.)
>
> This grant is in nearly all respects like the two immediately preceding, the grantees named being but two in number and reciting their intention to establish a colony.

This is also one of the grants referred to by counsel. See *Tameling* v. *United States Freehold, etc., Co.* (93 U. S., 644, 647–649).

> November 18, 1845. The Gervasio Nolan grant. By Governor Manuel Armijo. Reported No., 39. Suit No. 46 in the Court of Private Land Claims. Rejected by the Court of Private Land Claims April 16, 1894.
>
> This grant was made to three persons, apparently in consideration of the services rendered to the country by all and especially one of them. It was for an immense tract of land upon which they particularly desired to raise stock, the amount of land susceptible of cultivation being small. The petition was directed to the governor, who, without the concurrence of the departmental assembly or the report of any subordinate official, made the grant.
>
> (House Ex. Doc. 28, Thirty-sixth Congress, second session, p. 2.)

This grant was prosecuted before the Court of Private Land Claims by Mr. Frank Springer, resulting

in the rejection of the claim because of want of authority in Armijo to make the grant, especially upon the consideration named. An appeal was taken to this court (*Pinkerton's heirs* v. *United States*, No. 31, October term, 1897), but the appellants failing to print the record, the appeal was abandoned and dismissed by the court. This is the first instance of a grant being made by Armijo for any other purpose than that of colonization and cultivation.

> November 28, 1845. The Bosque del Apache grant. By Governor Manuel Armijo. Confirmed by Congress June 21, 1860. Reported No., 35. (House Ex. Doc. 14, Thirty-sixth Congress, first session, p. 232.)
>
> This was a grant made to Antonio Sandoval in recognition of the valuable services he had rendered to the country "not only personally, but also with his property, in forced loans and in other ways." The grant was made "exempt from tax."

This is the grant which has been frequently referred to by counsel for the Government in discussing the present case, as made to the same grantee, just eleven days before the Estancia grant and upon the same consideration (R., 82–84).

The next grant is the Estancia, involved in the case under discussion.

The next grant is the Cebolla, December 31, 1845, and was before this court in the recent case of *United States* v. *Elder* (177 U. S., 244).

May 7, 1846. The John Scolly or La Junta grant. By Governor Manuel Armijo. Reported No., 9. Confirmed by Congress June 21, 1860. (House Report 457, Thirty-fifth Congress, first session, p. 163.)

This grant was made to six persons, who were to cultivate their lands within five years on the pain of losing them and having them given to someone else. It does not appear how large the allotments of tillable lands were, but the amount included within the limits fixed in the act of possession was 25 square leagues; but Congress, in confirming the grant, reduced this to 5 square leagues. This was evidently not a series of allotments under either the Mora or Las Vegas grants, although a large part of the land is in conflict with those grants.

The last grant purporting to have been made by Armijo, as appears from the archives, is the Sierra Mosca grant, of June 4, 1846, which was before this court in *Ortiz et al.* v. *United States* (176 U. S., 422), the court holding it to be invalid for absence of proof sufficient to sustain the execution, and because of the strong probability that the signature of Armijo had been forged.

So that, a résumé of Armijo's grants will show that only three purport to have been made as rewards for services or in consideration of pecuniary advances to the country, to wit:

(1) The Gervacio Nolan grant, dated November 18, 1845, for about 600,000 acres, lying adjacent to and just south of the Maxwell grant. The petition for the grant was signed by three persons, to wit: Gervacio

Nolan, Juan Antonio Aragon, and Antonio Maria Lucero, and was dated November 15, 1845. The title papers translated are as follows, and may be found in the transcript No. 15742, case 31, October term, 1897 (*Pinkerton* v. *United States*):

No. 4.

Seal third.—One dollar.

Years eighteen hundred and forty-four and eighteen hundred and forty-five.

[SEAL.]

MOST EXCELLENT GOVERNOR: The Citizen Gervacio Nolan, and associates, native of Cañada, married, of the Christian religion (R. & A.), resident of the Real del Oro, in San Francisco del Tuerto, before the benevolence of your excellency, in the best manner provided by law, and most convenient to us, reserving such protests as may be useful and necessary, appears and states, sir, that whereas I have observed in this department there is a great deal of vacant land, and under mortmain, that being cultivated would be beneficial to the inhabitants of the country, and desiring to furnish occupation for a large family I have, I have found a piece of land, in the little cañon of Red River, vacant, unpopulated, and uncultivated, and without damage to any third party, being situated to the south of the possession of Messrs. Miranda and Beaubien, which, in the name of our supreme powers of the Mexican nation, we solicit from the benignity of your excellency to be pleased to grant us the favor of giving us the possession

of said land, marking out to us, as its boundaries, on the north, the possession of said Messrs. Miranda and Beaubien; on the south, one league in a direct line, including the Sapello River, according to its current (cordillera); on the west, another league from Red River and its current; and on the southeast, the little hills of Santa Clara, with their range, to the little cañon of Ocaté. It is to be observed that a very small portion of said lands is susceptible of cultivation; but what is more important is to establish the raising of horned cattle, sheep, and horses. And in order that your excellency be more fully informed of my intentions, that they are pure, I will make a short report of my conduct, which, being plain and evident, its merits may secure this grant to me, as I have resided in this country for twenty-three years, and I have rendered service whenever called upon for the benefit of the nation, such as campaigns, express contributions, &c. I therefore implore the assistance of your excellency that you be pleased to favor us with this grant. In view of all which, we humbly pray and request your excellency to grant our petition, by which we will receive the grant and favor we impetrate. We swear to our good faith, protesting costs and whatever may be necessary, &c.

Real de San Francisco en la Tuerto, Nov. 15th, 1845.

Gervacio Nolan.	[Rubric.]
Juan Antonio Aragon.	[Rubric.]
Antonio Maria Lucero.	[Rubric.]

SANTA FE, *November 18, 1845.*

By virtue of the career of merit, so analogous as represented by the petitioner and his associates, I have seen proper to grant the land petitioned for in the name of the supreme Government of the Mexican Nation; and this Government, in consideration of the above, and the services he himself has rendered to the nation, I have seen proper to grant unto him the aforesaid land, with the boundaries and limits he asks for, by virtue of the authority in me vested according to law, free from all tax and tribute; therefore the petitioner will present himself to the justice of the peace of De Mora, that he may put him in possession and execute the necessary documents.

MANUEL ARMIJO. [Rubric.]

In this place of Lo de Mora, on the thirtieth of the month of November, in the year one thousand eight hundred and forty-five, I, the justice of the peace, citizen Thomas Benito Lalanda, and my attending witnesses, with whom I acted by appointment, in the absence of a notary public, there being none, according to law, and in obedience to the supreme decree of the most excellent governor, as contained in the margin, dated the 18th of November of the present year, in reference to the petition made by Gervacio Nolan and associates, and, by virtue of the grant of land which he solicits, I proceeded in company with the aforesaid witnesses, and the party interested being present, I showed him the petition made by

him, and the rules and conditions to which he should conform, according to the custom of the country in regard to colonization, and, having informed himself of all that was proposed to him, I took him by the hand and walked him over said land, where he pulled up grass, threw stones, and cried with joy, Long life to the sovereign constitutional Congress of the Union, taking possession of said land quietly and peacefully, without injury to any third party or to the national credit of the Mexican nation. He was, at the same time, pointed out the boundaries of said possessions. They are: On the north, the lands of Don Guadalupe Miranda and Don Carlos Beaubien; on the south, 1 league south of the Sapello River; on the east, 1 league west of Red River, following the same range; and on the west, the little canyon of Ocaté, and 500 varas west of the little hills of Santa Clara, in a direct line.

It being understood that the pastures and watering places are for all the petitioners in common, and that the said grant is made in conformity to the petition, being free from all pension, also from all tax, tribute, and mortgage, or other incumbrance, that they, their children, heirs, and successors may enjoy said lands without being in anywise molested by any person at any time; and if they should be disturbed by any person, that he be not heard in court or out of it, this being equal to any judgment rendered, agreed to, and not appealed, and the possession is in like manner given to him *ad litem*, for all purposes; and, in order that the present

deed of grant may have all the force and validity the law requires, interpose the authority conferred upon me, signed, in order that it may appear with those in my attendance; to all of which I certify.

THOMAS BENITO LALANDA.
[Rubric.]

Attending:
CRESTINO TAPIA. [Rubric.]
SERVIANO GOMES. [Rubric.]

Fees, without the paper, twenty-five dollars. I swear it. [Rubric.]

On May 27, 1848, Aragon and Lucero conveyed whatever interest they may have acquired to Nolan in consideration of $50 paid to each, and Nolan became the owner of the entire 600,000 acres. (See transcript No. 15742, in the office of the clerk of this court, in the case of *Pinkerton's heirs* v. *United States*, docketed No. 31, October term, 1897.) The same was also considered by this court in an ejectment suit of *Pinkerton* v. *Ledoux* (129 U. S., 346). This same Gervacio Nolan is alleged in the petition to have been the nephew of Antonio Sandoval and his especial object of favor, as Sandoval conveyed this (Estancia) grant to him by deed of donation of July 8, 1848 (R., 3, 46, 47). The Juan Antonio Aragon who received possession of the Estancia grant as agent of Sandoval is evidently one of the grantees in this Nolan grant.

(2) The Bosque del Apache grant of November 28, 1845, to Sandoval, heretofore discussed. (R., 82–84.)

(3) The Estancia grant, now under consideration, to Antonio Sandoval, dated December 7, 1845 (R., 45).

These three are the only instances wherein Governor Armijo undertook to dispose of the public domain as rewards for services or in payment of pecuniary obligations. It is these three grants, all made within three weeks, to members of one family, already the recipients of a lavish generosity of the public domain, upon which the appellants must found their custom, so long and uniformly indulged in by Governor Armijo, that it is to be presumed that he was clothed with supreme and dictatorial powers to dispose of the public domain without limit and without price. These three grants, all made within six months of the declaration of war, May 13, 1846, and from which time the authority of Mexican officials to lawfully exercise whatever powers they may have in fact possessed relative to the public domain ceased.

The "Bases Organicas" recognized by article 134, Section V, there were laws in force prior to its date relative to the alienation of the public lands and also laws for colonization of the same, and these were specifically continued in force, leaving no room for the intervention of dictatorial exercise of the sovereign powers by the governor of a department of the republic.

It is therefore contended that the grant complies neither with the colonization law of August 18, 1824, and regulations of November 21, 1828, nor with the laws passed under the constitution of 1836, and declared policy by the law of April 4, 1837; hence the

grant is without lawful origin, imposing no obligation upon the Mexican nation and none upon its successor.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

()

Office Supreme Court U.S.
FILED
MAR 1 1901
JAMES H. McKENNEY,
Clerk.

No. 133.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

~~J. FRANCISCO CHAVEZ, APPELLANT,~~
~~v.~~
~~THE UNITED STATES.~~ } No. 133.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

~~HERIC ANTONIO MONTOYA GRANT IN NEW MEXICO.~~

[redacted] ABSTRACT OF ARCHIVES.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

J. FRANCISCO CHAVEZ, APPELLANT, v. THE UNITED STATES. } No. 88.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

NERIO ANTONIO MONTOYA GRANT IN NEW MEXICO.

SUPPLEMENTAL BRIEF AND ABSTRACT OF ARCHIVES.

With a view of showing when, by what official, to whom, for what purpose, the extent and under what circumstances the vacant public lands in New Mexico were disposed of or attempted to be disposed of, from independence in 1821 to the American occupation in 1846, the Government presents a carefully compiled abstract or summary taken from the archives and files in the office of the surveyor-general of New Mexico and the files of the Court of Private Land Claims. This abstract has been made by Mr. Will M. Tipton, special agent of the Department of Justice, under the direction of counsel for the Government; and for our present purposes, the various "grants" have received an arbitrary consecutive

numbering, from 1 to 101, in their chronological sequence, without regard to their official designation as archives or reports.

There is included in this summary, as No. 1, a letter from Facundo Melgares, governor of the province of New Mexico, by which it appears that the reestablishment of the constitution of 1812 was duly promulgated in Santa Fe, the capital of New Mexico.

There is also included, as No. 51, a copy of archive 1244, dated March 13, being an unsigned draft of a grant to Antonio Armijo and seventy families of lands at the junction of the Sapello, M[illegible] and Coyote rivers, which was referred to in the original brief as showing that the colonization law of 1824 and the regulations of 1828 were recognized as being in force at and prior to that date.

The rest of the summary includes ninety-nine "grants" or attempted dispositions of the vacant public lands in New Mexico. The information as to thirty of these was obtained from the archives in the office of the surveyor-general for New Mexico. As to sixty-four of them, from the papers produced from private hands and filed before the surveyor-general under the law of July 22, 1854, and before the Court of Private Land Claims, and as to five of them information was gleaned from the journals of the Territorial deputation, on file with the surveyor-general.

It is believed that this summary is as accurate as it is possible to make it without printing in full the archives and reports themselves. An examination of it will develop, as suggested in the original brief, that every official and official body in New Mexico attempted to

dispose of the vacant public lands of the nation at some time during this period, and that no such general custom and usage ever obtained in the Territory as would justify and require it to supersede, as the practice and procedure in such cases, a known law, even if such were permissible under the act of March 3, 1891.

From Mexican independence in 1821 to November 21, 1828, the date of the promulgation of the regulations under the colonization law of 1824, thirty-two "grants" were made of lands in New Mexico, of which five were made by political chiefs and acting political chiefs (to wit, Nos. 10, 11, 12, 13, and 29); one by the governor (No. 6); one by the lieutenant-governor (No. 7); two by alcaldes (to wit, Nos. 21 and 24); six by common councils—ayuntamientos—(Nos. 2, 3, 4, 5, 8, and 9); one by the provincial deputation (to wit, No. 14); fifteen by the Territorial deputation (to wit, Nos. 15, 16, 17, 18, 19, 20, 22, 23, 25, 26, 27, 28, 30, 31, and 32), and one by the governor of Chihuahua (to wit, No. 33).

As to this period, the abstract requires no additional comment further than to suggest that a large proportion of the thirty-two "grants" were intended to be allotments and assignments of small quantities of agricultural lands, a majority of which were under previously existing grants for the establishment of towns or the promotion of colonization in communities under the jurisdiction of municipal bodies and their ayuntamientos, all of which were subject to the general control of the Territorial deputation.

Of the fifteen so-called "grants" made by the Territorial deputation, only Nos. 16, 17, 19, 27 (the entry in the journal of the Territorial deputation recites that the

decree of January 4, 1813, enacted by the Cortes of Spain, was in force at that time, March 17, 1836), 30, and 31 appear to be original grants of the vacant public lands, and not allotments under previously existing town or community grants, but as to this fact, the evidence at hand is very defective and much is necessarily and generously left to surmise. The others are unquestionably allotments under previously existing town and community grants.

From November 21, 1828, to December 29, 1836, the date of the adoption of the new constitution, fifteen "grants" were attempted—four by political chiefs (to wit, Nos. 41, 43, 45, and 47); six by the Territorial deputation (to wit, Nos. 35, 36, 37, 39, 40, and 44); one by the common council (to wit, No. 48); three by alcaldes (to wit, Nos. 34, 42, and 46); and one by the State of Coahuila and Texas (to wit, No. 38).

During this period, all of the fifteen so-called grants, except the grant involved in the case at bar (No. 37) and No. 42, which was a mining location under the old Spanish ordinances of 1783 and known as the Ortiz Mine grant, were allotments under previously existing grants, or were grants for the establishment of new towns and communities under which allotments were had, except No. 38, which was an empresario grant, and known as the Arkansas or Beale's Colony grant.

From December 29, 1836, to the American occupation in 1846, fifty-two "grants" were attempted; sixteen by governors (to wit, Nos. 52, 53, 58, 62, 64, 66, 76, 77, 78, 83, 90, 91, 92, 93, 99, and 100); four by the departmental assembly (to wit, Nos. 88, 89, 95, and 98); thir-

teen by prefects and acting prefects (to wit, Nos. 56, 60, 61, 65, 67, 68, 69, 75, 79, 80, 81, 82, and 96); five by justices of the first instance (to wit, Nos. 84, 85, 86, 87, and 101); thirteen by alcaldes and justices of the peace (to wit, Nos. 49, 50, 54, 55, 57, 59, 63, 70, 71, 72, 73, 74, and 97), and one by the State of Texas (to wit, No. 94).

During this period the summary shows that twenty-five of these "grants" were evidently allotments or assignments under previously existing grants to towns, communities, or settlements (to wit, Nos. 49, 50, 54, 55, 57, 58, 59, 60, 61, 63, 68, 72, 73, 74, 75, 79, 80, 81, 82, 84, 85, and 86); eleven were new settlements and allotments thereunder (to wit, Nos. 56, 62, 65, 66, 67, 69, 70, 89, 93, 98, and 99); four were empresario grants (to wit, Nos. 64, 76, 77, and 78); ten were new grants to individuals by the governors of New Mexico (to wit, Nos. 52, 53, 83, 88, 90, 91, 92, 94, 95, and 100), and two were mining locations (to wit, Nos. 71a nd 101).

The following table, compiled from the abstract of the archives, will prove interesting as showing by what functionaries and bodies grants purport to have been made in New Mexico during the period 1821 to 1846 and the numbers made by each:

Political and acting political chiefs	9
Governors	16
Lieutenant-governors	1
Alcaldes	3
Justices of the peace	8
Judges of first instance	5
Ayuntamientos (common councils)	7
Prefects and acting prefects	13
Constitutional justices or alcaldes	7

Provincial deputations	1
Territorial deputations	21
Departmental assemblies	4
State of Coahuila and Texas	1
State of Texas	1
Governor of Chihuahua	2
Total	99

The abstract further reveals that no class of officials or official bodies confined themselves to dispositions of one particular character, but attempted "grants" of various kinds. This fact, taken in connection with the foregoing table, tends rather to disprove than to prove the assertion of appellant's counsel that such a well defined and established custom or usage existed in New Mexico as would constitute an abrogation of the known and existing law at that time relative to grants of land, even if the court were permitted, by the terms of the act of 1891, to indulge in any such portentious presumption.

Thus, it seems we are permitted no criterion save, Is the claim involved in the case at bar one that appears "to be upon a title lawfully and regularly derived from the Government of * * * Mexico?" Obviously, it is not.

The judgment of the Court of Private Land Claims should be affirmed.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

ABSTRACT OF ARCHIVES.

No. 1. **1820.**

December 31. Archive 1088.

This archive consists of two papers.

The first is a printed proclamation by the Count of Venadito, viceroy of New Spain, dated September 18, 1820, and issued for the purpose of circulating throughout the vice-royalty the royal decree of March 26, 1820, the full text of which is therein included.

This decree imposes penalties upon every Spaniard who refuses to swear allegiance to the political constitution of the monarchy, or who, upon taking the oath, resorts to protests, reservations, or indications contrary to the spirit thereof.

This proclamation is signed with the rubric of the viceroy and the signature of a secretary.

On the margin is a written indorsement in the following words: "Durango, November 2, 1820. Let it be published in the district of the provinces under my command. Alejo Garcia Conde."

The second paper in this archive is a letter from Facundo Melgares, governor of the province of New Mexico, dated December 31, 1820, and directed to the first alcalde of Santa Fe, inclosing a copy of the above proclamation and requiring him to publish it in the territory under his jurisdiction, and to acknowledge its receipt.

A translation of the archive is as follows:

TRANSLATION OF ARCHIVE 1088.

Don Juan Ruiz de Apodaca y Eliza Lopez, de Letona y Lasqueti, Count of Venadito, Grand-Cross of the military and national orders of St. Ferdinand, and St. Hermenegild, commander of Ballaga and Algarga in that of Celatrava and of the decoration of the Lis del Vendé, lieutenat-general of the national army, viceroy, governor, captain-general and superior political chief of this New Spain, subdelegate superintendant-general of the public exchequer, mines, and tobacco bureau, judge-conservator of the latter, president of its board, and subdelegate-general of mails in the same Kingdom, etc.

The following royal order has been communicated to me by the ministry of war.

"Ministry of War.=Most Excellent Sir.=The acting secretary of the government of the Peninsula states to me the following.=Under date of to-day the King has been pleased to direct to me the following decree.=The constitution of the Monarchy, to which I have sworn allegiance, being the fundamental law which regulates the rights and duties of all Spaniards with respect to the Throne, to the nation, and between themselves, and considering that those who refuse to recognize the fundamental law of a State by the act itself renounce the protection of said law, all the advantages of the society that acknowledges it, and even the right to live in its territory, I have decided to declare in conformity with the decree of the general and extraordinary Cortes of August 17, 1812, and with the concurrence of the provisional council (*junta provisional*), that every Spaniard who may refuse to swear allegiance to the political constitution of the Monarchy, or who upon doing so may resort to protests, reservations, or indications contrary to the spirit thereof, is unworthy to be considered a Spaniard, by the act itself

is deprived of all honors, employments, emoluments, and prerogatives proceeding from the civil power, and shall be expelled from the territory of the Monarchy, and, should he be an ecclesiastic, shall moreover suffer the occupancy of his temporalities. And I charge the political chiefs and other constitutional authorities, under the strictest responsibility, with the execution of said decree and penalties. You will have it understood and will direct what is proper for its fulfillment.=It is signed with a rubric.=By royal order I communicate it to your excellency in order that you observe and promptly execute it, publishing it in the province under your command and circulating it to whomsoever it may be proper. God preserve your excellency many years. Madrid, March 26, 1820.=By the same royal order I transmit it to your excellency for the same purposes. God preserve your excellency many years. Madrid, April 2, 1820.=Amarillas.=To the Viceroy of New Spain."

And in order that it may come to the notice of all, and that the decision of His Majesty may be complied with, I command that it be published by proclamation in this capital, and in the other cities, towns, and villages of the Kingdom, copies being circulated to whomsoever it may be proper. Given at Mexico, September 18, 1820.

THE COUNT OF VENADITO. [RUBRIC.]

By command of his excellency:
[Signed]
JUAN IGNACIO NEGREYROS Y SORIA. [RUBRIC.]

DURANGO, *Nov. 3, 1820.*

Let it be published in the district of the provinces under my command.
[Signed] ALEJO GARCIA CONDE. [RUBRIC.]

I herewith transmit to you a copy of a proclamation, including a royal order in relation to the imposing of

penalties upon those who may refuse to swear allegiance to the constitution or who upon doing so may resort to protests or indications, to the end that you publish it in the district under your charge, giving me notice of its receipt and fulfillment.

God preserve you many years.

Santa Fe, Dec. 31, 1820.

[Signed] FACUNDO MELGARES. [RUBRIC.]

To the first appointed alcalde of this capital.

No. 2. **1822.**

Archives 616. April 8. The Maria Nieves Mirabal grant. By the common council of Santa Fe.

This is one of nineteen allotments which had been ordered made by the common council of Santa Fe to settlers at Galisteo. The tract was 100 varas wide and 756 varas long. The possession was given by Pedro Armendaris, first alcalde of Santa Fe. The lands are situated at Galisteo, a town which is still in existence, and it is stated in the muniment that the lands are the same lands which the grantee had been holding under a verbal order of Don Alberto Maynez, who had formerly been an acting governor of the province. Maynez was acting governor some time about 1815–1817.

No. 3. **1822.**

Archive 892. April 8. The Matias Sandoval grant. By the common council of Santa Fe.

This is another one of nineteen allotments ordered made by the common council of Santa Fe to settlers at

Galisteo. The tract was 100 varas wide and 1,000 varas long. It was allotted under precisely the same circumstances as the tract described in archive 616.

No. 4. **1822.**

Archive 893. April 8. The Rafael Sena grant. By the common council of Santa Fe.

This is another one of nineteen allotments ordered made by the common council of Santa Fe to settlers at Galisto. The tract was 100 varas wide and 1,050 varas long. It was allotted under precisely the same circumstances as the tracts described in archives 616 and 892. In this muniment the date of Acting Governor Mayneq's incumbency is referred to as being six years prior to the date of the instrument of allotment.

No. 5. **1822.**

Archive 894. April 8. The Felipe Sandoval grant. By the common council of Santa Fe.

This is another of the same kind of allotments as those described in archives 616, 892, and 893, being made at the same place, by the same officer, and under the same alleged authority.

No. 6. **1822.**

May 2. The town of Anton Chico grant. By Governor Facundo Melgares. Reported No., 29. Confirmed by Congress June 21, 1860.

The petition in this case was made by Salvador Tapia, for himself and seventeen others, with a view to obtain-

ing sufficient land to enable them to support their families, and was apparently directed to the common council of San Miguel del Bado.

Upon this petition was indorsed a statement to the effect that although the need and right of the petitioners were recognized, it was not possible to accede to their request, for the reason that the land asked for was without the boundaries of the grant of El Vado; and it was referred to the governor in order that with his consent it might be done as they requested. This statement is signed by Manuel Baca, who appears to have been the constitutional alcalde and president of the common council of San Miguel del Bado.

Following this is an indorsement, signed by Governor Melgares, that it is proper that the petition be made on common paper, and that the common council draw up the expediente and send it to the provincial board (junta de provincia) in order that it be approved, etc.

Following this is an unsigned statement similar in purport to the preceding statement signed by Baca, and apparently being a reference of the matter by the common council of El Vado to the provincial deputation, which was undoubtedly the same body referred to by Governor Melgares as the junta de provincia.

The documents heretofore referred to are originals; and then comes a copy of what purports to be an order of Governor Melgares to the alcalde, Manuel Baca, to place the parties (here referred to as Manuel Rivera and thirty-six men) in possession of the grant they ask for, followed by a copy of what purports to be an act of possession, signed by Manuel Baca as president, and by Jose Miguel Baca as secretary—evidently of the common council of San Miguel del Vado. This act of possession mentions the outboundaries of the tract, but does not show that any allotments were made therein to the thirty-six petitioners; but it does recite certain conditions attach-

ing to the grant, among others these, that the place referred to was to be common not only to the petitioners, but also to all citizens who in the future might congregate there, and that the pastures and watering places were to be common without prejudice to a third party. The originals and the copy above referred to are all dated in 1822.

Then comes an original document dated March 8, 1834, by Juan Martin, an acting constitutional alcalde, who states that by verbal order of the constitutional alcalde, Juan Jose Cabeza de Baca, he placed in possession of lands at Anton Chico the persons named in the document, the lands having been donated some seven or eight years before and entirely abandoned because of Indian attacks. The parties placed in possession are fourteen in number, and their allotments vary in width from 50 to 200 varas, the most of them being 100 varas.

No. 7. **1822.**

1822 or 1823. The Bracito or Hugh Stevenson grant. By Jose Ordas, lieutenant-governor at El Paso. Confirmed by Congress June 21, 1860. Reported No. 6.

The petitioner for this grant began his proceedings as early as 1805 by a petition to Joaquin Real del Alencaster, governor of the province of New Mexico, asking for a tract of land on the Rio Grande, in the southern part of New Mexico, and describing the same by natural objects. He proposed to construct a house and corrals and to cultivate the soil, maintaining a number of armed men for protection against the Indians until the working of mines in the vicinity should attract enough persons to form a permanent settlement. The governor stated that the petition would be considered whenever settlement

should be established in the vicinity of the land asked for. In 1816 the petitioners applied to the commandant-general of the province of Durango for a grant of the lands, stating that he had been in possession of them since 1805, and that a number of persons from El Paso had agreed to accompany him in the formation of a settlement. After two references of this petition to the lieutenant-governor at El Paso, the first of which elicited a favorable report and the second a report somewhat less so, the petitioner in 1817 requested the lieutenant-governor to take no further action on the matter until asked so to do by him.

In 1820 the petitioner again applied to the governor of New Mexico, asking that the grant be made to him alone, as he had been occupying it for eleven years, and the people who had agreed to go with him to establish a settlement had given up the idea on account of the restrictions placed upon the grant. About six months later Facundo Melgares, then governor of New Mexico, declined to make the grant on the ground that he was believed to have even less authority to do so than had belonged to Alencaster, who had refused; and he directed the party to apply to the proper authority, but without stating to whom it was proper to apply.

In 1821 the petitioner again applied to the commandant-general of Durango for a grant of the tract, reciting all the steps taken by himself and the authorities from 1805 up to that date. A recommendation by a comptroller of Durango that the grant be made followed this petition, and testimony of witnesses was taken in April, 1822, by the justice at El Paso, tending to show that the land had never been segregated from the public domain. Other unimportant proceedings were had immediately afterwards, and in 1822 or 1823 the grant was made by Jose Ordas, who was lieutenant-governor at El Paso. No original granting decree is known to be in existence,

but the fact of the making of the grant was proved by testimony taken in 1849, as was also the further fact that a portion of the archives at El Paso, where the originals of all grants were required to be deposited, had been destroyed by United States troops in 1846 during the war with Mexico. It was alleged that this act prevented the claimants from producing all the documents necessary to the establishment of their claim, and upon the favorable report of the surveyor-general of New Mexico, the grant was confirmed by Congress.

While the earlier proceedings indicate an intention to establish a settlement, it appears when the grant was actually made that there was but one grantee, Juan Antonio Garcia, by whose heirs a two-thirds interest in the grant was sold in 1851 to Hugh Stevenson, by whose name the grant is frequently referred to in New Mexico.

No. 8. **1823.**

April 4. The John Heath or Juan Gid grant. By the common council of El Paso. Suit No. 59 in the Court of Private Land Claims. Rejected by Court of Private Land Claims June 26, 1895. Appealed to Supreme Court of the United States, and judgment affirmed. (*Ossun* v. *United States*, 169 U. S., 165.)

This was a grant at the place called El Bracito of a tract of land containing 25 square leagues, made by the ayuntamiento, or common council, of El Paso to Dr. John Heath, whose name appears written in the Spanish documents Juan Gid. The grantee proposed to bring for the settlement of the land thirty families, among which were to be persons of many professions and trades; to establish a hospital and drug store; to build a warehouse supplied with all kinds of merchandise for wholesale;

and to do many other things which he enumerated in his petition.

The proceedings were had under the colonization law of January 4, 1823, but the conditions or requirements attached to the grant were never performed. The concession was revoked by the provincial deputation.

No. 9. **1823.**

July 19. The Casa Colorado grant. By the common council of Tome. Confirmed by Congress December 22, 1858. Reported No. 5.

This grant was made by the ayuntamiento or common council of Tome on the petition of Jose Maria Perea for himself and forty other persons whose names appear written on the margin of the petition, asking that they be given the full possession of certain lands which they had been occupying at a place called Casa Colorada, and setting forth the natural boundaries which they wished to have designated to them. The common council passed upon the petition and resolved that a committee of its members should designate to them the places they asked for as boundaries, and that the proceedings should be forwarded to the provincial deputation for its customary approval. This was done and the action of the council was approved by the deputation. There is no instrument showing in what manner, if any, the lands were allotted among the settlers, but the settlement which was thus formally established is still in existence. It is to be observed that in their petition the applicants refer to the fact that the provincial deputation had ordered the people who were scattered about in the hills and valleys to be gathered together in settlements, in compliance with the provisions of article 16 of the decree of June 23, 1813.

No. 10. **1823.**

December 23. The Preston Beck grant. By the acting political chief, Bartolome Baca. Reported No., 1. Confirmed by Congress June 21, 1860.

This grant was of a very large tract described by certain natural objects, and was made to one person for the purposes of establishing a range for the raising of large and small stock and horses, and also for farming as much land as the water and locality would allow. The petition was directed to the acting political chief, who forwarded it to the provincial deputation with a lengthy approval, stating that if that body saw fit it might make the grant. The deputation resolved that the grant be made, and thereupon it was made by the acting political chief. The possession was not given until 1825, and the alcalde who gave it stated that the grant was made by the territorial deputation. It is to be noted that New Mexico was a province when the grant was made, but became a territory of the Mexican Republic by the law of July 6, 1824.

No. 11. **1824.**

February 27. The Vallecito de Lobato grant. By Bartolome Baca, political chief of New Mexico. Reported No. 108. Suits 142, 204, and 236 in the Court of Private Land Claims. Rejected by Court of Private Land Claims and now on appeal in the Supreme Court of the United States. (*Peabody* v. *United States*, No. 268, October term, 1898.)

In this case the petition was directed to the constitutional alcalde of Abiquiu, by Jose Rafael Samora, for himself and twenty-five other persons. The alcalde

certified that the statements in the petition were true, that the land applied for was vacant, and the applicants were not property owners.

The document, which is alleged to evidence the authority under which the alcalde subsequently acted in giving the possession, is an unsigned rough draft of a letter to that officer, and is claimed to have been the act of Bartolme Baca, the political chief of New Mexico. It is as follows:

"In virtue of your report you may proceed to place Jose Rafael Samora, with the twenty-five persons who join him in his petition, in possession of the lands asks for, in order that he may not lose time in going to work; nor shall you act with the necessary formalities which can not be had now on account of the most excellent deputation, to which body the matter belongs, not being in session.

"I enjoin upon you that in placing them in possession you treat those unfortunate persons with charity, charging them for your work in proportion to their adverse circumstances rather than according to the tariff of fees that is in force.

"God, etc., February 27, 1824.

"To the alcalde of Abiqain."

It is claimed that the constitutional alcalde of Abiquiu, Francisco Trujillo, placed the interested parties in possession of allotments varying in size from 100 to 150 varas. In the act of possession it is stated that he did this, "in virtue of the decree of Don Bartolome Baca, present political chief of this province, given at Santa Fe on February 27, 1824, upon the petition gotten up by Jose Rafael Samora and his companions," etc.

In addition to the distribution of the alloted lands the alcalde designated the outboundaries of the tract, which included a much larger area than that which was allotted. The settlement thus formed is still in existence.

No. 13. **1824.**

Archive 387. March 28. The Francisco Garcia et al. grant. By Bartolome Baca, political chief of New Mexico.

The petitioners in this case alleged that they had been unjustly dispossessed of lands which had been donated them and of which they had been placed in possession, and prayed that they might again be placed in possession of the property.

The political chief, Bartolome Baca, stated the petition was not admissible, because of its being against the right of the settlers of El Rito, and there not being sufficient water for irrigation, but he hoped that the alcalde and the common council of Abiquiu would help the petitioners at the Riano canyons or somewhere else.

The alcalde thereupon placed some seventeen persons in possession of allotments of agricultural land in the "surplusage of the possession of the Riano canyons." This distribution was made on the 1st of April, 1824. On the 21st of December of the same year Baca approved the distribution of the lands made by the alcalde of Abiquiu.

No. 13. **1824.**

Archive 670. April 12. The José Ignacio Ortiz grant. By Bartolome Baca, political chief of New Mexico.

The petition in this case was made by José Ignacio Ortiz, second alcalde of the city of Santa Fe, to Don Bartolome Baca, political chief of New Mexico, asking that he be given a piece of land which lay back of his residence in said city. The first alcalde was ordered to report on the matter, but stated that it was his opinion that the common council was the body that should make such report. The political chief then referred the petition to

that body, which reported favorably, upon which the political chief ordered the first alcalde to place the petitioner in possession of the land and to draw up at the end of the order the customary document, which was done. There was no indication of intention to cultivate the land, and the grant appears to have been without any conditions whatever.

No. 14. **1824.**

Archive 1090. April 12. The José Ramon Alarid et al. grant. By the provincial deputation.

The only document in this case is a copy made in 1855 of what purports to be a petition made by José Ramon Alarid for himself and fourteen other persons, asking for some pieces of land which, judging from the description, are probably on the Pecos River some miles below the town of San Miguel del Vado, which petition was directed to the constitutional alcalde, Diego Padilla; also a reference of the petition by Padilla to the political chief; also a reference by the latter official to the deputation in these words:

"SANTA FE, *March 26, 1824.*

"Let it be transmitted to the most excellent deputation in order that in view thereof it may decide, as belongs to its powers.

"BACA."

Also a statement by the officers of the deputation showing that on April 12, 1824, the deputation had resolved that the land be granted, and that the applicants apply to the alcalde to place them in possession. This paper shows that the lands were intended for farming purposes, but as there is no act of possession, it is impossible to state what, if any, allotments were made.

No. 15. **1824.**

November 19. The town of Tecolote grant. By the Territorial deputation. Confirmed by Congress December 22, 1858. Reported No., 7.

This grant was made by the Territorial deputation, to which body the petition had been referred by the alcalde, to whom it had been addressed, and after a report made by the political chief, who had been requested to report by the deputation. The applicants were six in number, and the grant was described in the petition by natural boundaries. It was contemplated that the lands should be alloted, but the alcalde, who placed the applicants in possession, says nothing about having made any distribution. This settlement was the beginning of the present town of Tecolote.

No. 16. **1824.**

November 19. The Agua Negra grant. By the Territorial deputation. Confirmed by Congress June 21, 1860. Reported No., 12.

The petition in this case was directed to the Territorial deputation by the wife of Antonio Sandoval, he being absent from New Mexico, asking that he be given a square league of land at a place called Agua Negra for the pasturing of the stock which he had had there for years. The deputation referred the petition to the political chief, who reported favorably thereon, whereupon the deputation made the grant. The commissioner who was authorized to give the possession gave it to the extent of four times the area granted by the deputation.

Sandoval was the only grantee, and no claim was made that he intended to cultivate the land or establish any settlement thereon.

No. 17. **1824.**

November 19. The Pablo Montoya grant. By the Territorial deputation. Confirmed by Congress March 3, 1869. Reported No., 41.

This was a grant made to one person of an immense tract of land for the raising of large and small stock and horses. The petition was directed to the deputation, which body referred it to the political chief, who reported thereon favorably, whereupon the deputation made the grant. There was no act of possession, and the papers appear to have contemplated that there should be none, as the claimant was to take possession of the land by virtue of a copy of the proceedings, which was furnished him by order of the deputation. There is no indication of any intention to use the land for any other purpose than stock raising. The deputation said in making the grant: "It was resolved that the same be granted to him under the conditions heretofore imposed upon other persons receiving grants upon the frontiers of the Indian tribes," but it is not stated what those conditions were.

No. 18. **1825.**

Archive No. 137. February 16. The Juan Antonio Cabeza de Baca grant. By the Territorial deputation.

This grant, although in fact made by the Territorial deputation of New Mexico, was rather in the nature of a regranting of a tract of large area, which in 1821 had been granted to the same petitioner, Luis Maria Cabeza de Baca, by the provincial deputation of Durango, to which body, according to a statement made by Bartolome Baca, the political chief of New Mexico, in a letter to the alcalde of El Vado in 1823, the province of New

Mexico was subordinate in 1821. It appears that the claimant Baca did not have any "document of possession" at the time he made his petition to the deputation of New Mexico in 1825, and evidently had some reason for fearing that on that account the land he claimed under the grant of the deputation of Durango might be granted to another party. His petition in 1821 shows his declared intention of cultivating the land as well as using it for the pasturing of his stock. The deputation of New Mexico in making the grant directed that the documents should be presented to the alcalde at El Vado in order that he place the petitioner in possession. It is not known that the possession was ever given, but there are documents in the archives of the surveyor-general's office at Santa Fe which show that the applicant Baca continued his efforts to have such possession given, at least until January, 1826.

The lands described in this grant were confirmed to the town of Las Vegas in 1860, under a grant made in 1835, and the heirs of Baca were given the right to select other lands of equal area in lieu thereof.

No. 19. **1825.**

March 3. The Esteros grant. By the Territorial deputation. Confirmed by Congress June 21, 1860. Reported No. 16.

This grant was made by the deputation to which body the petition was addressed, after the same had been submitted to and reported upon by the political chief. There was but one grantee, and he stated that he had been in possession of the land petitioned for for the term of nine years. It is doubtful if it was intended to grant more than 1 square league, but the area surveyed and patented under the grant is over 4 leagues.

No. 20. **1825.**

March 3. The Antonio Chavez or Alamillo grant. By the Territorial deputation. Reported No., 79. Suit No. 37 in Court of Private Land Claims. Rejected by Court of Private Land Claims December 4, 1893, and appealed to the Supreme Court of the United States, where the judgment was affirmed. (*Hays* v. *United States*, 170 U. S., 637.)

This was a grant of a considerable tract of land described by natural boundaries made to one person by the Territorial deputation, to which body the petition was directed. The deputation referred the matter to the political chief in order that he should report as to whether the land asked for belonged to the settlements of Socorro and Sevilleta, and in case it did so belong, whether it might be granted without injury to a third party. The report of the political chief was favorable, it being his opinion that not the slightest damage would result to either of the settlements named, but, on the contrary, the settlement under the proposed grant would furnish employment to the poor people of those places. The deputation thereupon made the grant and directed the grantee to apply to the alcalde of Socorro to place him in possession. This he did, and was given the possession by that officer, who designated the natural objects which were to serve as boundaries. There is no doubt that a portion of the land granted had up to that time been claimed as belonging to the settlements of Socorro and Sevilleta, that is to say, the lands were within the exterior boundaries of those tracts as the same were claimed by their respective inhabitants, but in making this grant there was no intimation that it was intended to be an allotment under either of the prior claims; on the contrary, portions of the lands claimed by each were taken from them and incorporated into the new grant to Chavez.

No. 21. **1825.**

Archive 60. March 3. The Juan Antonio Armijo et al. grant. By Diego Padilla, first alcalde of San Miguel del Bado.

This was a case in which half a dozen persons who had been placed in possession of lands at the pueblo of Pecos by the alcalde of El Vado, who purported to have proceeded under an order of the political chief, Bartolome Baca, which had been presented to him by the principal petitioner, asked that the Territorial deputation should approve the possession thus given. The deputation stated that, notwithstanding it was not the place of said alcalde to adjudicate lands, in virtue of the manifest poverty of the persons making the petition, it had decided to approve the deeds (hijuelas) of the allotments made by that officer. Five of these deeds are attached to the other papers, and a note states that a certified copy of the whole expediente had been furnished the parties.

No. 22. **1825.**

Archive 135. March 3. The Rafael Benavides et al. grant. By the Territorial deputation.

In this case the petition was presented by five persons, asking for lands for cultivation, which lands were described by natural boundaries and said to have been left uncultivated for many years by the Indians of Pecos, to whom they had belonged. The grant was made, with the boundaries recited in the petition, the only condition imposed being that the grantees were to present to the committee which had been appointed by the deputation to distribute the lands at Pecos, the certified copy of the expediente, with a view to being placed in possession. There is nothing to show whether the possession was ever given.

No. 23. **1825.**

Archive 807. March 3. The Miguel Ribera et al. grant. By the Territorial deputation.

The petition in this case was presented to the deputation by Miguel Ribera for himself and five other persons, claiming that he and his companions had been ejected from lands which had formerly been given them by order of the political chief, and that said lands had been sold by the Indians of the pueblo of Pecos. The petitioners asked that they be given certain lands adjoining those sold by the Indians, and which they describe by natural boundaries.

The deputation made the grant, with the boundaries asked for, and stated that if the Indians had made sales of any lands within those boundaries that the same should be null and void.

No. 24. **1825.**

August 20. The Talaya grant. By Severino Martinez, alcalde at Taos. File No., 86.

This petition was directed to the constitutional alcalde and the common council of Taos, asking that the two persons whose names are signed thereto, and also those who appear in an "accompanying list" be placed in possession of lands suitable for tillage, at a place called La Talaya, which apparently is somewhere in the vicinity of the settlement of Arroyo Hondo, north of the town of Taos. The "accompanying list" is not with the papers in the case.

The possession was given by Severino Martinez, the alcalde at Taos, by order of the common council, to thirty-six persons, to eight of whom were allotted 100

varas each, and to the others 50 varas each; but the grantees' names are not given.

The alcalde says that no application was made to the deputation to approve this proceeding, for the reason that that body had previously granted the land to other persons; but the latter had failed to cultivate it. The alcalde further says that the grant was made without prejudice to the first settlers of Arroyo Hondo, who were dependent on the waters of that stream; that the cultivated lands were to be fenced in common, and that the roads and watering places were to have sufficient room for the stock.

No. 25. **1826.**

March 16. The Maragua grant. By the Territorial deputation. Reported No., 121. Suit No. 276 in the Court of Private Land Claims. Rejected by the Court of Private Land Claims October 4, 1898.

The petition in this case was made by three persons and directed to the deputation, asking for a piece of tillable land, which they described by natural boundaries and estimated to be about 1,000 varas wide and 4,000 varas long.

The deputation referred the matter for report to the common council of Santa Fe, which body referred it to the attorney of the municipality. This official made a report suggesting the conditions that should be imposed upon the applicants, whereupon the common council reported favorably upon the petition, and the deputation made the grant. The alcalde of Santa Fe placed each of the parties in possession of a strip of land 500 varas wide, setting forth the natural boundaries of each piece. There is nothing in the papers to indicate that these allotments were made under some prior grant, but rather

that they were made within a territory over which the common council of Santa Fe exercised a provisional control.

No. 26. **1826.**

March 16. Grant to the residents of Las Trampas. By the Territorial deputation. The evidence of the making of this grant is found in the surveyor-general's office at Santa Fe in the journal of the proceedings of the Territorial deputation, folio 106.

Nothing is known of this claim except that a petition of various residents of Las Trampas, asking for lands, was laid before the deputation and that body thereupon made the grant as asked for; it being resolved that the proper justice should place the parties in possession of the lands, but it being provided, also, that no one should be compelled to go to settle at the place granted.

No. 27. **1826.**

March 17. Grant to Simon Saenz. By the Territorial deputation. The evidence of the making of this grant is found in the surveyor-general's office at Santa Fe, in the journal of the proceedings of the Territorial deputation, folio 106.

The entry in the journal in regard to this grant is as follows: "There was taken up for action a petition by the citizen Simon Saenz, a resident of Taos, in regard to possession of lands at the Arroyo Hondo. It was discussed and then resolved that this petition be transmitted to the alcalde at Taos, in order that he give to

this party the possession he asks for; notifying him that he must be given possession gratuitously, in accordance with article 15 of the decree of January 4, 1813, enacted by the Cortes of Spain and in force at this date."

No. 28. **1826.**

Grant to Cristobal Jaramillo. April 12. By the Territorial deputation. The evidence of the making of this grant is found in the surveyor-general's office at Sante Fe in the journal of the proceedings of the Territorial deputation, folio 111.

The petitioner asked to be placed in possession of lands either at San Antonito or at Nuañes, and the common council of Albuquerque had reported on the matter. The deputation decided that the constitutional alcalde of Albuquerque should place the petitioner in possession of one of the two tracts, but without prejudice to third parties.

No. 29. **1826.**

July 28. The Orejas del Llano de los Aguajes grant. By Antonio Narbona, political chief of New Mexico. Reported No. 117. Suit No. 169 in the Court of Private Land Claims. Rejected by the Court of Private Land Claims December 1, 1896.

The muniments on which this claim is based are forgeries, but that question was not passed on by the Court of Private Land Claims, the rejection being on legal grounds.

It has been claimed that the papers in this case show that the petitioner presented his application to the alcalde

of the jurisdiction of Abiquiu, asking for a tract of land described by natural boundaries; that the alcalde forwarded the petition to the political chief for his action; that the latter ordered the alcalde of Abiquiu to place the petitioner in possession; that the alcalde complied with the order, designating the natural objects that were to constitute the boundaries of the tract; that subsequently to the act of possession the political chief, who had ordered the giving of possession, reconsidered and regranted the land.

No. 30. **1827.**

March 17. Manuel Rivera grant. By Territorial deputation. Lands situate on Arroyo Hondo near Santa Fe.

Grant made for farming purposes to one person in accordance with the report of the common council of Santa Fe. Extent of land is not stated, but the deputation says the party was to be placed in possession of as much land as he could reasonably be expected to cultivate, and completely subject to the conditions dictated. It does not appear what these conditions were. The only evidence of this grant appears in the journal of the Territorial deputation, at folio 144.

No. 31. **1827.**

April 20. Francisco Perez Serrano grant. By Territorial deputation. Lands situate on Arroyo Hondo, near Santa Fe.

Extent not shown, but the grant was made evidently in the face of an unfavorable report by the common council of Santa Fe, but was to be without prejudice to any

person having a legal right and who might be able to prove that, contrary to the views of the deputation, the land had not been abandoned for more than twenty years prior to the date of the grant. It was probably a small grant for farming purposes similar to the one made to Rivera. See journal of Territorial deputation, folio 148.

No. 32. **1827.**

August 9. E. W. Eaton grant. By Territorial deputation. Reported No., 19. Confirmed by Congress June 21, 1860.

This grant was made to twenty-five or more persons to whom lands were allotted with the understanding that they were to have "the same right with the rest of the public to pasture their animals in the vicinity thereof." The allotments were either at or near the present town of Galisteo, where other allotments had been made as early as 1816, and which latter have been recently confirmed by the Court of Private Land Claims in suit No. 54, Town of Galisteo grant, so called.

No. 33. **1828.**

August 13. Isleta grant. By Juan Antonio Arce, governor of the State of Chihuahua. Suit No. 33 in Court of Private Land Claims. Rejected by Court of Private Land Claims, September 27, 1894.

This was a grant to the pueblo of San Antonio de Isleta, now a town in the State of Texas, for a very large tract of land, a portion of which lies in New Mexico. The town of Isleta obtained from the State of

Texas, in 1854, a confirmation of a claim for more than 8,000 acres, upon which the town is situate, based upon a grant made by the Spanish Government in 1751; and the grant of 1828 was to be used in common by the inhabitants of the town for purposes of pasturage.

No. 34. **1828.**

December 11. Canada de las Mestenas grant. By Vicente Trujillo, constitutional alcalde of the pueblo of Taos. File No. 82 in the surveyor-general's office, and suit No. 163 in Court of Private Land Claims. Rejected by Court of Private Land Claims, appealed to the Supreme Court, and appeal there dismissed.

This grant was made to eleven families, to each of which was allotted a strip of land from 100 to 232 varas in width. The alcalde says that in making the grant he was governed by the decree of 1813, and that he signed the muniment by virtue of his office and the authority conferred upon him by law. There is nothing to show that he gave the possession by virtue of any order from superior authority; but the muniment indicates that the object of the grant was to give the allotments to persons who would cultivate them, and that any allottee failing to do this was to be ejected from the property.

No. 35. **1829.**

November 28. Town of Manzano grant. By Territorial deputation. Reported No., 23. Confirmed by Congress June 21, 1860.

This grant was made to about one hundred persons who had settled on the lands asked for prior to the presentation of their petition to the common council of Tome,

upon the report of which body the territorial deputation directed that the parties be placed in possession of the lands applied for, giving to each the tillable land he might be able to cultivate, and making provision for allotting lands to other persons who subsequently might join the settlement. The town of Manzano is still in existence.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, p. 65.)

No. 36. **1830.**

May 18. La Gotera grant. By Territorial deputation. Reported No., 56, and suit No. 83 in Court of Private Land Claims. Rejected by Court of Private Land Claims.

The petition for this grant was directed to the deputation, which body referred it to the common council of Santa Fe for report, upon the rendition of which report the deputation made the grant to the seven petitioners, to five of whom were allotted strips of land 500 varas in width, and to the remaining two strips of 100 varas each, the land allotted being the only land granted, and the object of the grant being the promotion of the agricultural interests of the country.

(Mis. Doc. 181, Forty-second Congress, second session, p. 50.)

No. 37. **1831.**

November 12. Nerio Antonio Montoya grant. By Territorial deputation. Reported No., 51, and suit No. 20 in the Court of Private Land Claims. Rejected by Court of Private Land Claims March 25, 1896, and now pending on appeal in the Supreme Court.

This grant is involved in the case at bar.

No. 38. **1832.**

March 14. Arkansas or Beales Colony grant. By State of Coahuila and Texas. File No., 100. See *Interstate Land Co.* v. *Maxwell Land Grant Co.*, 139 U. S., 569.

This was an empresario grant or a contract between the State of Coahiula and Texas and two contractors who, under the provisions of the law of colonization of said State, dated March 24, 1825, engaged to settle within certain described limits a colony of two hundred families, in consideracion of which they were to receive certain lands. The colony was never established.

No. 39. **1832.**

July 20. Tierra Amarilla grant. By Territorial deputation. Reported No., 3. Confirmed by Congress June 21, 1860.

This grant was made to a number of persons after their petition therefor had been referred by the political chief of the Territory to the Territorial deputation, and by that body to the common council of Abiquiu, which latter body reported favorably thereon, estimating that the land applied for was capable of supporting five hundred families. The deputation in making the grant directed the alcalde of Abiquiu to deliver to each one of those who might join the petitioners a certain number of varas of land, on which, in his opinion, they could sow 4 or 5 fanegas of wheat; and also added that the pastures, watering places, and roads were to be free, according to the "custom prevailing in all settlements."

No. 40. **1832.**

July 28. Rio de Picuris grant. By Territorial deputation. File No., 71; suit No., 65 in the Court of Private Land Claims. Rejected by Court of Private Land Claims September 15, 1894.

This grant was made upon the favorable report of the common council of Taos, and under it an allotment was made to 42 families of strips of land varying in width from 50 to 150 varas, the pastures, watering places, and roads being free, "as has been and is customary in every settlement that is made." The settlement so formed is still in existence.

No. 41. **1833.**

Some time in this year, not known exactly. Town of Cubero grant. By Francisco Sarracino, political chief of New Mexico. Suit No. 1 in Court of Private Land Claims. Confirmed by Court of Private Land Claims August 29, 1892; appealed to the Supreme Court and judgment affirmed. (*United States* v. *Chavez*, 159 U. S., 452.)

This was a grant to sixty-two persons, who by virtue thereof founded the present town of Cubero, and who, according to the allegations of their petition, distributed the lands among themselves "in accordance with the laws and customs of the Mexican Government." The Court of Private Land Claims in its decree called the grant a "colony grant."

No. 42. **1833.**

December 18. Ortiz mine grant. By Francisco Baca y Ortiz, first alcalde of Santa Fe. Reported No. 43. Confirmed by Congress March 1, 1861.

This was a grant of three mining claims to two persons, with a privilege to the use of the waters and pasturage over an area of 16 square leagues. The grant was made under the old Spanish mining ordinances of 1783.

No. 43. **1834.**

March 7. Town of Tajique grant. By Francisco Sarracino, political chief of New Mexico. Reported No. 21. Confirmed by Congress June 21, 1860.

This was a grant to twenty persons of a tract of land at a place called Tajique. The area included within the natural objects named by the alcalde as the boundaries of the grant was over 7,000 acres. Within these boundaries there was allotted to each grantee a strip of agricultural land 112 varas wide. The town of Tajique which was thus formed is still in existence.

It is to be noted that Sarracino made this grant provisionally, in order not to delay the planting of crops, stating that it was to be understood that when the deputation should meet it would confirm the possession which the alcalde of Valencia was ordered to give.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, 46.)

No. 44. **1835.**

March 25. Town of Las Vegas grant. By Territorial deputation. Reported No. 20. Confirmed by Congress June 21, 1860.

This grant was made originally to twenty-nine persons for the purpose of establishing a settlement at a place then known as Las Vegas Grandes, on the Gallinas River. The area within the exterior boundaries was nearly 500,000 acres, but the original grantees were located upon the river, where allotments of tillable lands were made to them. The grant was made not only to the petitioners and the residents of the town of El Vado, but also to any one who might need lands to cultivate, and allotments were made at different times subsequent to the first allotment, and to many persons. The unallotted lands were used in common for the pasturage of stock and for obtaining timber and firewood. The settlement established under this grant formed the nucleus of the present modern town of Las Vegas.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, 16.)

No. 45. **1835.**

September 28. Town of Mora grant. By Albino Perez, political chief of New Mexico. Reported No. 32. Confirmed by Congress June 22, 1860.

More than seventy persons were placed in possession of allotments within the natural objects named as outboundaries by the alcalde of San Jose de Las Trampas on October 20 and 21, 1835, and that officer states that this was done in compliance with a decree of the politi-

cal chief of the Territory, Don Albino Perez, dated September 28, 1835. Upon a copy of the act of possession the surveyor-general based his approval of the grant and it was thereupon confirmed by Congress; but there is good reason to believe that many other allotments were subsequently made within the outboundaries recited in the act of possession or distribution of October 20 and 21, 1835. The town of Mora and a number of villages are situate on this grant as confirmed and patented. The unallotted lands were enjoyed in common, as in the case of other like grants.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, 180.)

No. 46. **1835.**

Archive 268. October 22. Jose Silvestre Estrada grant. By Manual Antonio Sanchez, alcalde of Las Trampas.

This archive is dated on October 7, 1844, and is a revalidation on stamped paper of a document dated October 22, 1835, which was on paper not stamped, and which evidently was the muniment presented to Estrada as an evidence of his title to an allotment of 1,150 varas of land within the outboundaries of the Mora grant; but this particular archive was not before the surveyor-general at the time he passed upon that grant. The alcalde, Sanchez, who executed the original paper to Estrada, is the same officer who made the distribution to the seventy-odd persons on October 20 and 21, 1835, in compliance with Perez's decree of September 28, 1835, and in this case also he refers to the same as authority for his action.

No. 47. **1836.**

February 25. Petaca grant. By Albino Perez, political chief of New Mexico. Reported No. 105. Suits Nos. 99, 153, and 233 in the Court of Private Land Claims. Confirmed by Court of Private Land Claims September 5, 1896. Now pending on appeal in the Supreme Court of the United States (*United States* v. *Pena*, No. 293, October term, 1898).

This grant was made to a small number of persons, only three being mentioned by name in the petition, but more than thirty were placed in possession of strips of land of 150 varas in width, with a common right in the woods, pastures, and waters. A distribution of lands was made within the outboundaries designated long subsequent to the date of the distribution of 1836, and when the Court of Private Land Claims confirmed the grant it confirmed it to persons who were named in a list of 1848, some of whom had been allottees under the proceedings of 1836.

The grant was made by Perez after the petition (which had been directed to the common council of Ojo Caliente) had been acted upon by that body, which, judging from its report, evidently expected that the deputation would act in the premises.

(Senate. Ex. Doc. No. 31, Forty-fourth Congress, first session, p. 3.)

No. 48. **1836.**

June 23. Canon del Rio Colorad grant. By the common council of Taos. Reported No. 93. Suit No. 166 in the Court of Private Land Claims. Rejected by Court of Private Land Claims November 30, 1896. Appealed to the Supreme Court and appeal there dismissed.

This grant was made by the common council of Taos

to three persons who had asked for it as a tract upon which they wanted to keep animals. There is nothing in the papers to show that there was any intention on the part of the applicants to cultivate any portion of it, or that the land granted was considered as an allotment under some grant previously made, although the latter theory was attempted to be established by claimants at the time of the trial in the Court of Private Land Claims, but in this they entirely failed.

No. 49. **1837.**

Archive 631. March 7. The Miguel Mascarenas grant. By Juan Nepomuceno Trujillo, alcalde of Las Trampas.

The muniment is a revalidation on stamped paper, dated October 8, 1844, of a document on paper not stamped, dated March 7, 1837, which latter was the evidence of title of Miguel Mascarenas to 200 varas of land allotted to him within the outboundaries of the Mora grant, and evidently under the general authority of the decree issued by the political chief, Albino Perez, on September 28, 1835.

No. 50. **1837.**

March 9. The Guadalupita grant. By Juan Nepomuceno Trujillo, alcalde of Las Trampas. Reported No. 152. Suit No. 131 in the Court of Private Land Claims. Rejected by Court of Private Land Claims November 24, 1896.

The petition for this grant was made by three persons and directed to the alcalde of Las Trampas and to the

common council. The petition indicates that it was made not only in the interest of three parties who signed it but also on behalf of other persons whose names appeared on a list which accompanied it, but which is not found with the papers now on file in the surveyor-general's office. The alcalde states in what has been called the *grant* that as the land applied for was in his jurisdiction, he made it known to the principal men at the valley of Santa Gertrudis de lo de Mora, and that as no injury would result to any third party they assented to the petition. He then ordered the *colonists*, as he calls the petitioners, to appear by the 7th of the next April, presumably for the purpose of being placed in possession. There is no documentary evidence of this having been done, although it was claimed by plaintiffs in their pleadings before the Court of Private Land Claims that possession was actually given. A very large part, if not all, of this grant is within the outboundaries of the Mora grant, and it was doubtless intended to be a series of allotments under that grant, although it is not positively known that such allotments were actually made.

No. 51. **1837.**

Archive 1244. March 13. Unsigned draft of a grant to Antonio Armijo and seventy families of lands at the junction of the Sapello, Mora, and Coyote rivers.

In exercise of the power which is granted me by article 1 of the regulations issued on the 21st of November, 1828, under the law of the 18th of August, 1824, and in view of compliance with the requirements provided in said regulations in the various articles thereof, and the land known under the name of The Junta de los Rios, Sapello, Mora, and Coyote being comprehended by

them, it being thus to the interest of the best service of the Mexican Nation, and to the particular service of this Territory, according to the petition of citizen Antonio Armijo, who, for himself and in union with seventy families that are set out in the accompanying list of names, desires to settle upon and cultivate that land, after examining the report made by the common council of El Bado, under date of November 6, of the preceding year of 1836, I have seen fit to grant said land to said Armijo and associates, in the name of the supreme powers of the nation, as there is no opposition or impediment according to the sixteen articles included in the law of the 18th of August, 1824, already cited, and with commendable preference to a Mexican citizen, and the more so as no foreigner is found in the petition, saving the formalities prescribed in article 5 of said regulations, inasmuch as the most excellent deputation is in recess, and reserving the provisions of article 6 of said regulations, I issue this title under article 8, in absolute conformity with the laws on the matter, and designate five months, counted from the date of this document, as the specific and indispensable term for the settlement and cultivation of said land, so that, if in said time, any considerable part or all of them shall not have complied with the settlement or occupation, it shall fall under the penalty of forfeiture and the right to a new denouncement on the part of another, under the provisions of law 11, book 4, title 12, article 4 of the Royal Instructions of the 15th of October, 1754, and the provisions of article 11 of said regulations, so that in its case the grant shall be void, the Government reserving the right to make use of the authority to revalidate it in the case stated, granting to each head of family 200 varas of land, for farming, in the narrow part of the land and in the widest portion 100 varas, to which end the constitutional alcalde of Bado, in rigorous compliance with the laws, will be

present at the allotment of the land to issue the main deed of donation, the particular deeds of the individuals, and to return to this Government the main original proceedings, with the plat of the land granted, in conformity with the provisions of article 9 of said regulations, requiring of the principal contractor, who is Citizen Antonio Armijo, the obligation provided for in article 10 of said regulations, the new settlement to be subject, in civil matters, to the jurisdiction of Bado, with the other provisions of the laws and regulations in the matter.

Given at Santa Fe, New Mexico, on the 13th day of the month of March, 1837.

(Unsigned.)

No. 52. **1837.**

October 16. The Alvarez grant. By Manuel Armijo, governor of New Mexico. Reported No., 143. Suit No. 231 in the Court of Private Land Claims. Rejected by Court of Private Land Claims October 5, 1898.

This was a grant made to one individual, who, in petition for it, stated his object to be the raising of stock, principally sheep, which he expected to improve by the introduction of Merinos; and the grant was made to him upon a condition suggested by himself, that within three years he was to carry into effect the enterprise of raising Merino sheep. Possession of a large tract within certain natural boundaries was given the applicant by an alcalde, but it is understood that the condition imposed by the governor was never fulfilled. There is no evidence in the case that the grant was an allotment under a prior grant or that its object was anything more than above indicated.

No. 53. **1838.**

March 14. The Jose Sutton grant. By Manuel Armijo, governor of New Mexico. Reported No., 45. Suit No. 143 in Court of Private Land Claims. Rejected by Court of Private Land Claims December 20, 1898.

This was a grant made to one person, for a tract of land of 16 square Spanish leagues, or more than 69,000 acres, for the purpose of constructing thereon, within three years from the date of being placed in possession, a factory of ordinary woolen fabrics and commencing the raising of Merino sheep. The grantee was to be placed in possession whenever he saw fit, but he never applied to anyone to place him in possession, and failed to fulfill any condition attached to the grant. It was an absolute grant upon the conditions described.

(House Ex. Doc. 112, Thirty-seventh Congress, second session, p. 4.)

No. 54. **1838.**

September 18 and November 25. Rancho de la Hermosa Estrella grant. By Juan Antonio Garcia and Jose Francisco Sandoval, justices of the peace. File No., 34 in surveyor-general's office.

This claim had its origin in two distinct titles dated as above. The first was a title to land which had been previously given to someone else by the alcalde, Manuel Sanchez (who made the first allotment under the Mora grant), and which had not been cultivated within the time fixed in the colonization laws. The justice of the peace, Garcia, in making this new allotment of the land, refers to the same authority under which the original allotment had been made, viz, the decree of September 28, 1835, by the political chief, Albino Perez.

The second title was for another piece of land, granted by the justice of the peace Sandoval to Bautista Llara, by virtue of a decree of the prefect of the northern district, Juan Andres Archuleta.

Both of these tracts were within the Mora grant, and evidently allotments thereunder. They finally became the property of one person, who conferred upon the ranch thus formed the name Hermosa Estraella, under which the claim was filed in the surveyor-general's office.

No. 55. **1839.**

March 22. Sanguijuela grant. By Santiago Ulibarri, constitutional alcalde of San Miguel del Vado. Alleged to have been approved by Manuel Armijo, governor of New Mexico, on May 8, 1842, and granted anew by him on October 3, 1843. Suit No. 170 in Court of Private Land Claims. Rejected by Court of Private Land Claims June 7, 1898.

This grant was made in 1839 to five persons, who in their petition therefor stated it was within the boundaries of the Las Vegas grant. The alcalde in making the grant stated that the petitioners should observe and comply with all the requirements that the law of colonization prescribed. The Court of Private Land Claims in rejecting the grant did so on the ground that the title papers presented were inadmissible as evidence. It does not appear that this grant was intended as an allotment under the grant to the town of Las Vegas, but rather it was made by the exercise of that power of control and disposition over lands assigned to a town, but undisposed of, which was frequently employed under the Mexican Government in New Mexico, where the granting of lands within the outboundaries which had been assigned to a town or community would not result in injury to the latter.

No. 56. **1839.**

August 23. San Pedro grant. By Don Antonio Sandoval, prefect of the second district of the Department of New Mexico. Reported No., 14. Confirmed by Congress June 21, 1860.

This grant was made to eight persons, although the original petition was made in the interest of a greater number and was directed to a prefect who referred it for report to the justice of the peace of Bernalillo, upon the receipt of which report the prefect ordered the justice to place the parties in possession. This was done by giving to each 300 varas of land for cultivation within certain outboundaries containing a much greater area. In 1845 Governor Armijo, in adding another league to the grant, also approved the former grant of 1839 and the possession subsequently given thereunder. The grant was evidently made with a view to the establishment of a settlement. In asking the addition of a league to the grant in 1845, the petitioners asked that it be given them in consequence of the grant, petition, and colonization laws of January 4, 1813, and August 18, 1824. It is also to be observed that the justice of the peace, Pedro Jose Perea, in executing to the settlers in 1844 a sort of revalidation of the act of possession of 1840, says that the decree of January 4, 1813, was in force in the Mexican Republic.

(House report 457, Thirty-fifth Congress, first session, p. 210.)

No. 57. **1839.**

December 18. Los Chupaderos de la Lagunita grant. By Damasio Salazar, justice of the peace at San Miguel del Vado. Suit No. 113 in Court of Private Land Claims. Rejected by Court of Private Land Claims, January 25, 1898.

This was a grant to one person of a half league of land to enable the applicant to cultivate a small tract and to pasture the few stock he had, but without an exclusive right to the watering places. There is nothing in the case to show that this was an allotment under any other grant now known, but the land in question was evidently within the territory over which the justice of the peace of San Miguel del Vado exercised jurisdiction.

No. 58. **1840.**

March 23. Juan Salas or Los Alamitos grant. By Governor Manuel Armijo. Reported No., 69. Suits 91 and 183 in Court of Private Land Claims. Confirmed by Court of Private Land Claims, and now pending on appeal in Supreme Court. (*United States* v. *Catron*, No. 199, October term, 1898.)

This grant was made for purposes of cultivation to twelve persons, to each of whom an instrument was given describing the allotment of which he became the owner; but this was not done until Governor Armijo had submitted the petition to the common council of Santa Fe, which made thereon favorable report. And it appears from the whole proceeding that while the lands granted and allotted were not within the boundaries of any grant

of which they were acknowledged to be a part, they were within the Territory over which the common council of ayuntamiento of Santa Fe exercised some sort of control. The cultivated lands were to be fenced as a protection against stock belonging to the people of the city of Santa Fe and vicinity.

(Senate Ex. Doc. 37, Forty-second Congress, third session, p. 10.)

No. 59. **1840.**

June 8, 1840, and February 24, 1846. Juan Ortiz grant. By Felipe Sena and Jose Albino Chacon, constitutional justices. File No. 5 in surveyor-general's office.

Although filed as one claim in the surveyor-general's office, this is really two claims, the first being an allotment of 300 varas at El Vadito and the second an allotment of 50 varas at Cadillal, the former being within the outboundaries of the Vadito and the latter within those of the E. W. Eaton grant, reported No. 19, confirmed by Congress.

No. 60. **1840.**

June 12. Canada de San Francisco grant. By Juan Andres Archuleta, prefect of the first district of the department of New Mexico. Reported No. 57. Suit No. 98 in Court of Private Land Claims. Rejected by Court of Private Land Claims April 24, 1894.

The papers in this case are incomplete, so that it is impossible to tell how many persons were placed in possession, but the testimony indicates that there were per-

haps eight or nine grantees, and that the tract was distributed among them in allotments of 100 and 200 varas in width. The prefect made this grant upon the favorable report of the common council of Santa Fe, to which body the petition was directed. The land in question is on the Galisteo Creek and within the territory over which the common council of Santa Fe exercised a control.

No. 61. **1840.**

June 20. Rio del Oso grant. File No. 112. Suit No. 177 in Court of Private Land Claims. By Juan Andres Archuleta, prefect of the first district. Rejected by Court of Private Land Claims May 17, 1897.

The possession was given by a justice of the peace, who states that he acted by virtue of an order of the prefect of the above date, to whom the petition had been directed by Jose Antonio Valdez, for himself and six others, whose object was to obtain for cultivation lands situate on the Oso River. The petitioner Valdez and ten companions were placed in possession of allotments varying in width from 115 to 287 varas, within certain exterior boundaries. The justice names certain conditions under which the grant was made, such as the fencing of the tillable lands, the road was not to be closed up, the watering places were to be in common, the ditch for irrigation was to be worked by all the settlers in common every year, and always with a view to increasing the area under cultivation, even if only done in the interests of one or more persons. Although the lands allotted were entirely within the boundaries of the Juan Jose Lobato grant, which has been confirmed by the Court of Private Land Claims, there is nothing to show that the allotments were made under that grant.

No. 62. **1840.**

July 31. Dona Ana Bend Colony grant. By Francisco Garcia, governor of the State of Chihuahua. Reported No. 85. Suit No. 24 in the Court of Private Land Claims. Confirmed by Court of Private Land Claims March 25, 1896. Appealed to the Supreme Court and appeal there dismissed.

This grant was made to a large number of persons for the purpose of establishing a colony, with allotments to the settlers, who had a common right in the pasture and woodlands, etc. The inhabitants of this grant now number several thousands.

No. 63. **1840.**

December 15. Rumaldo Ariveche grant. By Antonio Montoya, justice of the peace. File No. 75.

This is an allotment to one person, made under some order emanating from a source not known. The land is probably situated within the boundary lines of the existing survey of the Tejon grant, reported No. 37, which was confirmed by Congress, June 21, 1860.

No. 64. **1841.**

January 11. Maxwell grant. By Manuel Armijo, governor of the department of New Mexico. Reported No. 15. Confirmed by Congress, June 21, 1860. (House Report 457, Thirty-fifth Congress, first session, p. 237.)

This was a grant for a tract of land containing more than 1,700,000 acres, made to two persons, who proposed

to devote it to the cultivation of sugar beets and the raising of stock, and in time to erect thereon factories of cotton and woolen goods. There are indications in the papers that the departmental assembly understood that it was the intention of the grantees also to establish a colony, they having offered lands to a number of persons who were to settle there. Governor Armijo made the grant "in conformity with the laws," but he does not cite any particular law.

No. 65. **1841.**

March 3. Town of Torreon grant. By Antonio Sandoval, prefect. Reported No. 22. Confirmed by Congress, June 21, 1860.

This was a grant of a tract of land containing more than 14,000 acres, made to twenty-seven petitioners, to whom allotments in severalty were made of the tillable land, all having a common right in pastures, woodlands, water, etc. The settlement thus established is still in existence. The prefect made the grant after having referred the petition for report to the justice of the peace of the town of Tome. This grant mentions the Nerio Antonio Montoya rancho as western boundary.

No. 66. **1841.**

March 20. Town of Chilili grant. By Governor Manuel Armijo. Reported No. 11. Confirmed by Congress, December 23, 1858.

This was a grant to twenty-seven persons, of a tract of land described by natural objects, within which the petitioners, who are referred to as colonists, were to be

allotted portions of the tillable lands. The settlement made under this grant was the foundation of the present town of Chilili.

(House report 457, Thirty-fifth Congress, first session, p. 182.)

No. 67. **1842.**

January 19. San Antonio del Rio Colorado grant. By Juan Andres Archuleta, prefect of the first district of New Mexico. Reported No., 76. Suit No. 4 in the Court of Private Land Claims. Rejected by Court of Private Land Claims.

The grant in this case was made with a view to the establishment of a town and the distribution among its founders of allotments of tillable land. The allotments made to the thirty-five families who were placed in possession were nearly all 100 varas in width; but the grant was not made to them alone, but also to any persons for whom subsequently there might be room in the settlement. The area within the outboundaries was very much greater than that of the allotments, and the colonists, as they were called by the alcalde who placed them in possession, had a right in common to the watering places and pastures.

No. 68. **1842.**

Archive No., 223. February 18. The Ignacio Chaves et al. grant. By Juan Andres Archuleta, prefect of the first district of the department of New Mexico.

The lands granted in this case were allotments at Galisteo, where other allotments had been made many

years before. The number of allotees was seven, to each of whom was given a strip of land 200 varas in width, they being restricted in the use of water to the overplus that might not be needed by the settlers who had lands further down the stream. The petition in this case was directed to the common council of Santa Fe, by which body it was referred for action to the prefect.

No. 69. **1842.**

February 23. Conejos grant. By Juan Adres Archuleta, prefect of the first district of the department of New Mexico. File No., 80. Suit No. 109 in Court of Private Land Claims.

This grant is mostly in Colorado, only a small portion being in New Mexico. It has not yet been tried in the Court of Private Land Claims. The tract included within the outboundaries is very large, perhaps 2,000,000 acres. Within these boundaries allotments were made to more than eighty families, leaving another portion unallotted with a view to its subsequent distribution to other persons who might come into the settlement. It is not known to the Government whether any of the allotments are still occupied as such, but it is known that there are several settlements now in existence within the outboundaries of the grant as claimed, the largest being the town of Conejos, and that there are hundreds of persons living on the tract holding their lands under the land laws of the United States.

No. 70. **1842.**

July 2. Apache Spring grant. By Demasio Salazar, justice of the peace. Reported No. 72. Suit No. 101 in the Court of Private Land Claims. Rejected by Court of Private Land Claims November 23, 1896, and now on appeal in the Supreme Court (*May Hays* v. *United States*, No. 155, October term, 1898).

This was a grant made by a justice of the peace to enable the grantee to establish a farm from which to support his family, although the area included within the natural objects named as boundaries was large, being perhaps 30,000 acres. There is nothing to indicate that it was an allotment under some grant previously made. The following condition appears in the grant: "That if he does not provide a protection to prevent the damages which may result to him, he is under obligation to bear them, it being commons and pasture grounds of the inhabitants of this precinct."

No. 71. **1842.**

October 21. Our Lady of Guadalupe Mine grant. By Jose Pino, justice of the peace of the jurisdiction of Tome. Suits 165 and 206 in the Court of Private Land Claims. Tried in Court of Private Land Claims, February 9–15, 1898, but not yet decided.

This is a grant of three mining claims under the ordinance of 1783, made to two persons, with an additional concession of a right to use the pasture and wood lands within certain described limits, and to construct thereon a residence and reduction works, but this right is expressly stated not to be an absolute and perpetual right of property, but, in accordance with the provisions of the ordinance, a common right.

No. 72. **1842.**

October 31. Santiago Bone or James Bonney grant. By Juan Antonio Gracia, justice of the peace. File No., 206. Suit No. 62 in the Court of Private Land Claims.

The land here granted was for agricultural purposes, and was situated on the Mora River, being undoubtedly an allotment under the so-called Mora grant, the lands of which were directed by the political chief, Albino Perez, to be allotted under his order of September 28, 1835, which is referred to in the Mora grant, as well as in this and many other so-called grants which were evidently nothing more than allotments under the Mora claim.

No. 73. **1842 and 1845.**

Jose Manuel Cordoba grant. By Juan Antonio Garcia, constitutional alcalde. File No., 35.

This claim is for a number of tracts, distributed under the decree or order of September 28, 1835, by the political chief Albino Perez, all of which are allotments under the Mora grant. Reported No., 32.

No. 74. **1843.**

January 28. Geronimo Gonzales grant. By Vincente Rivera, justice of the peace. File No., 76.

This is an allotment to one person of 400 varas of land in the new settlement of Angostura, and it is highly probable that it was made under the Anton Chico grant. Reported No., 29, which was confirmed by Congress June 21, 1860.

No. 75. **1843.**

February 7. Luis Griego et al. grant. By Juan Andres Archuleta, prefect of the first district of New Mexico. Archive No. 398.

This was a distribution of allotments of tillable land of a few hundred varas each to some thirteen persons. It was ordered by the prefect upon the report of the common council of Santa Fe, to which body the petition was directed. The possession was given by Antonio Sena, first alcalde of Santa Fe. The lands were situated in the vicinity of Galisteo, at which town the petitioners were residing when they applied for the land, although they were citizens of Santa Fe. They were restricted in the use of water for irrigation to what might not be needed by Don Domingo Fernandez, who had a prior right to the waters of the stream, and their right of pasturage also was in common with outsiders, and the number of stock they might keep was restricted by the terms of the concession. The lands in question are situated within the limits of the E. W. Eaton grant, as the same is surveyed and patented, and it is almost certain that it was upon that grant that these allotments were based.

No. 76. **1843.**

December 1. Rio de Don Carlos or Gervasio Nolan grant. By Manuel Armijo, governor of the department of New Mexico. Reported No. 48. Confirmed by Congress July 1, 1870. (House Ex. Doc. 112, Fifty-seventh Congress, second session, p. 30.)

Situate in the State of Colorado. This grant was apparently made to Gervasio Nolan alone, although in his

petition he stated that it was his intention to settle thereon, cultivate it, put stock on it, and establish a colony; and in his request to the justice of the peace to be placed in possession he says, "the governor of the department having donated us," etc., which indicates that although unnamed in the proceedings, there were persons whom the petitioner considered in some way associated with him in the grant, although he alone was named. His relations to those whom he proposed to introduce into the colony may have been those of an *empresario*.

No. 77. **1843.**

December 9. The Animas or St. Vrain and Vigil grant. By Governor Manuel Armijo. Reported No. 17. Suits Nos. 44, 128, 135, 154, and 216 in the Court of Private Land Claims. Confirmed by Congress June 21, 1860, to the extent of 22 square leagues. The suits in the Court of Private Land Claims are for areas in excess of that confirmed by Congress, several of them being for more than 4,000,000 acres.

There were but two petitioners in this case, and the grant appears to have been made to them alone, although they indicated an intention of establishing a colony thereon. The form of the muniment is so similar to that of the preceding case as to suggest the probability of both documents having been composed by one person.

(House report 457, Thirty-fifth Congress, first session, p. 269.)

No. 78. **1843.**

December 30. Sangre de Cristo grant. By Governor Manuel Armijo. Reported No., 4. Confirmed by Congress June 21, 1860. (Senate Ex. Doc. 141, Forty-seventh Congress, first session, p. 13.)

This grant is in nearly all respects like the two immediately preceding, the grantees named being but two in number and reciting their intention to establish a colony.

No. 79. **1844.**

Archive 227. January 3. Luis Carbono grant. By Juan Andres Archuleta, prefect of the first district of New Mexico.

The lands referred to are on the Mora River, within the boundaries of the Mora grant, and were allotted to the grantee by a justice of the peace on the 18th day of July, 1844, which justice refers to a decree of the prefect Archuleta, dated on January 3, 1844, as his authority for making the allotment. The original document having been on common paper was revalidated on stamped paper by Tomas Ortiz, judge of first instance of the department, on October 10, 1844. This was evidently one of the many allotments made within the Mora grant.

No. 80. **1844.**

Archive 473. January 30. Antonio Lirud grant. By the prefect of the first district of New Mexico.

The circumstances connected with this case, as disclosed by the muniment, are substantially the same as those in

the case of archive No. 227; the lands were in the same neighborhood and were an allotment of a strip 100 varas wide within the Mora grant.

No. 81. **1844.**

Archive 632. January 30. Marcelino Mascarenas grant. By Juan Andres Archuleta, prefect of the the first district of New Mexico.

This is another allotment of 200 varas of land within the Mora grant, made in the same neighborhood and under similar circumstances as the allotments described in archives 227 and 473.

No. 82. **1844.**

Archive 663. January 30, 1844. Felipe Montoya grant. By Juan Andres Archuleta, prefect of the first district of New Mexico.

This is an allotment of 100 varas of land within the Mora grant, made in the same neighborhood and under the same circumstances as the allotments described in archives 227, 473, and 632.

No. 83. **1844.**

February 13, 1844. Canon del Agua grant. By Governor Mariano Martinez. Reported No., 40. Confirmed by Congress June 12, 1866.

The petitioner in this case stated that he applied for the land in question not only as a citizen, but also as an employee of the Government in actual service to whom large sums were owed, and that he applied in the name

of the donation laws of January 4, 1813, and August 18, 1824, having no property by which he could support his family. The petition was dated February 12, 1844. Four days prior Governor Martinez had given to the petitioner a certificate of good character, and upon receipt of the petition he called upon Ambrosio Armijo, the departmental treasurer, to report thereon, the petitioner Ramirez being the first auditor of that office. Armijo made a favorable report, whereupon the governor laid the matter before the departmental assembly which body directed the governor to make the grant, which he immediately did on February 13, 1844. Two day later the petitioner was placed in possesion of the property by Santiago Flores, first alcalde of the common council of Santa Fe.

(House Ex. Doc. 28, Thirty-sixth Congress, second session, p. 28.)

No. 84. **1844.**

Archive 916. October 5. Diego Sandoval grant. By Tomas Ortiz, judge of first instance.

This is a title to an allotment of 100 varas of land within the Mora grant, issued in lieu of a document previously given the allottee as evidence of title, but which had been declared null and void, probably on account of its not being on stamped paper.

No. 85. **1844.**

Archive 917. October 5. Agapito Sandoval grant. By Tomas Ortiz, judge of first instance.

This is a title to an allotment of 200 varas of land, issued under the same circumstances as was the title in

the case of archive 916. In both cases it is stated that the lands had been in the first instance donated by the justice of the peace of that jurisdiction "by superior order;" that is, by the order of some superior authority.

No. 86. **1844.**

Archive No., 75. October 8. Nasario Aguilar grant. By Tomas Ortiz, judge of first instance.

This is a revalidation of the titles to two allotments of land, the extent of which is not stated, situated on the Mora River, and both of them being in all probability allotments under the Mora grant.

No. 87. **1844.**

Archive 70. October 12. Juan Lorenzo Alire grant. By Tomas Ortiz, judge of first instance.

This appears to be the issuing of a title to an allotment of 200 varas of land which had been made originally in 1835, but for which no instrument had been drawn up. The lands are within the Mora grant and were probably one of the allotments made thereunder in 1835.

No. 88. **1845.**

March 15, 1845. Ojo de la Cabra grant. By the departmental assembly. Reported No., 106. Suit No. 167 in Court of Private Land Claims. Rejected by the Court of Private Land Claims November 30, 1896. On appeal in the Supreme Court.

This was a grant of 1 square league of land, for which petition was made to the prefect of the third district,

Francisco Sarracino, by him referred to the common council of Valencia for report, which, having been made, he then transmitted it to the governor in order that he should transmit it to the departmental assembly, which body finally made the grant. The petitioner desired to use the land as pasture grounds for his cattle and horses, and had gone to some expense in sinking a well at the spring from which the tract took its name. The grant was subsequently revoked by the departmental assembly. There is nothing in the papers to suggest that it was an allotment under a grant previously made, nor that it was made for any other purpose than the pasturing of stock.

(See appellant's brief, pp. 12, 13, 14, 23, 25.)

No. 89. **1845.**

July 2. The Manuelitas grant. By the departmental assembly. Suit 242. Rejected by Court of Private Land Claims July 5, 1898.

The petition in this case was directed to the governor by Pedro Alcantar Vigil, for himself and in the name of nineteen persons whose names were in a list attached to the petition. They state that they desired the land, not only for themselves, but also for other persons who might be interested in the advancement of the new settlement. The governor was asked to lay the matter before the departmental assembly, which being done that body referred it to the prefects of the first and second districts, who were to require the justices of Mora and Las Vegas to report thereon. This action of the assembly was ordered by the governor to be carried into effect. The justice of the peace of Mora made report recommending that the grant be made for the river bottom lands, that the rest should be left for common pastures, and further suggested certain boundaries different from those asked for by the petitioners. The justice of the peace of Las

Vegas was opposed to making the grant on the ground that a portion of it was included in the grant to the town of Las Vegas. He says in effect that to colonize them there is contrary to law, because the land belongs to Las Vegas, but that they might be placed in possession of lands by the justice by the approval of the superior authorities. The assembly then made the grant with the condition that there was to be donated to them only the land they could cultivate, the rest remaining for the common benefit, as it had been up to that time. No act of possession appears, and consequently we do not know whether the assembly considered this a new grant or intended that the parties should receive allotments under the Mora or Las Vegas grants, although the former view appears to be more likely correct.

(See appellant's brief, pp. 8, 9.)

No. 90. **1845.**

November 18. The Gervasio Nolan grant. By Governor Manuel Armijo. Reported No. 39. Suit No. 46 in the Court of Private Land Claims. Rejected by the Court of Private Land Claims April 16, 1894. Appealed to the Supreme Court of the United States, and appeal there dismissed.

This grant was made to three persons, apparently in consideration of the services rendered to the country by all and especially one of them. It was for an immense tract of land upon which they particularly desired to raise stock, the amount of land susceptible of cultivation being small. The petition was directed to the governor, who, without the concurrence of the departmental assembly or the report of any subordinate official, made the grant.

(House Ex. Doc. 28, Thirty-sixth Congress, second session, p. 2.)

No. 91. **1845.**

November 28. The Bosque del Apache grant. By Governor Manuel Armijo. Confirmed by Congress June 21, 1860. Reported No., 35. (House Ex. Doc. 14, Thirty-sixth Congress, first session, p. 232.)

This was a grant made to Antonio Sandoval, in recognition of the valuable services he had rendered to the country "not only personally, but also with his property, in forced loans and in other ways." The grant was made "exempt from tax."

No. 92. **1845.**

December 7. The Estancia grant. By Governor Manuel Armijo. Reported No. 70. Suit No. 152 in the Court of Private Land Claims. Rejected by the Court of Private Land Claims December 20, 1898.

This grant was made to Antonio Sandoval, the same person to whom the Bosque del Apache grant, reported No. 35, was granted, and for similar reasons. The governor in his granting decree shows that he was led to make the grant in view of the valuable services which had been and were then being rendered to the country by Sandoval, who had performed the duties of prefect without pay until his back salary amounted to $9,000. The grant was made "free and exempt from all tax or tribute."

(Senate Ex. Doc. 40, Forty-second Congress, third session, p. 3.)

No. 93. **1845.**

December 31. The Cebolla grant. By Governor Manuel Armijo. Reported No. 61. Suit No. 108 in the Court of Private Land Claims. Confirmed by the Court of Private Land Claims September 5, 1896. On appeal in the Supreme Court.

This grant was made to five persons, who were left to divide the tillable lands among themselves and to fence them to avoid damages from stock. The language of the muniments indicates that they might have title in the irrigable lands only and did not have the right to prevent other persons from pasturing stock within the outboundaries of the tract.

(House Ex. Doc. 296, Forty-second Congress, second session.)

No. 94. **1846.**

January 5. The Salt Lake grant. By the State of Texas. Reported No. 161. Confirmed by Congress October 1, 1888.

This grant was made by the board of land commissioners for Bexar County, Tex., to one Simon Prado. The area is 160 acres, but it is not known under what law it was made. The land is situate in the central part of the Territory of New Mexico, and in that region which at one time was claimed as belonging to the State of Texas. The data in regard to this claim is very incomplete and consequently it can not be stated what was the consideration for the grant, if any.

No. 95. **1846.**

January 10. The Jornada del Muerto grant. By the departmental assembly. Reported No. 26. Disapproved by the surveyor-general of New Mexico, August 29, 1859, and subsequently rejected by the Supreme Court of the United States (13 Wall., 449).

The grant in this case was for an area of 2,000,000 acres, the grantees, two in number, binding themselves to sink two wells for the benefit of travelers crossing the long waterless stretch of country known as the Jornada del Muerto, to build two factories where persons convicted of crimes by the authorities would be received as laborers, and to provide arms for protection against the Indians, etc. The departmental assembly made the grant. There is no evidence in the papers that it was the intention to establish thereon a town, or to attempt to cultivate it, which was in fact impossible because of lack of water.

No. 96. **1846.**

February 9. The Cadillal grant. By Jose Francisco Báca y Terrus, acting prefect. File No., 90.

The petition for this grant was addressed to the common council of Santa Fe, which body referred it to the municipal attorney for report, upon the rendition of which the grant was made, and the first alcalde of the common council of Santa Fe was ordered to place the parties in possession. This he did, giving an allotment of 50 varas of land to each of sixty-one persons.

The petitioners in this case stated that they were citizens of Galisteo, and had been cultivating the lands for some years prior to the date of their petition. The lands

are partially, if not entirely, within the boundaries of the E. W. Eaton grant, reported No., 19, which has been confirmed by Congress.

While this grant is stated above to have been made by the acting prefect, it seems not improbable that the order to which his signature is attached is an order of the common council of Santa Fe, of which he may have been president, although at the time also acting as prefect.

These allotments may possibly bear the same relation to the Eaton grant as is borne to the Mora grant by the allotments described in archives 227, 473, 632, and 633, but the indefinite character of the documents makes it impossible to state positively that such is the case.

No. 97. **1846.**

February 13. The Gregorio Dabalos grant. By Pablo Melendres, justice of the peace of the Dona Ana Bend Colony. File No. 92.

This is an allotment of a tract of land 780½ varas square, made by the justice of the peace by virtue of the authority conferred upon him by the prefect of the district. This allotment was made under the Dona Ana Bend Colony grant, reported No. 85, which was confirmed by the Court of Private Land Claims March 25, 1896.

No. 98. **1846.**

March 10. The town of Chaperito grant. By the departmental assembly. File No. 7.

This grant was made by the departmental assembly to twenty-eight persons who desired to establish themselves

on the tract asked for with a view to farming it. Allotments of the tillable lands were made to them, and they had a common right to the pasture lands, which were half a league in extent around the settlement. It was provided, however, that all other persons who might subsequently settle on the grant were to enjoy the benefits thereof.

The lands in question, which include the present town of Chaperito, are situated within the boundaries of the Antonio Ortiz grant, reported No. 42, which was confirmed by Congress March 3, 1869, but there appears to be no connection between that grant and these allotments.

No. 99. **1846.**

May 7. The John Scolly or La Junta grant. By Governor Manuel Armijo. Reported No. 9. Confirmed by Congress June 21, 1860. (House Report 457, Thirty-fifth Congress, first session, p. 163.)

This grant was made to six persons who were to cultivate their lands within five years on the pain of losing them and having them given to someone else. It does not appear how large the allotments of tillable lands were, but the amount included within the limits fixed in the act of possession was 25 square leagues, but Congress in confirming the grant reduced this to 5 square leagues. This was evidently not a series of allotments under either the Mora or Las Vegas grants, although a large part of the land is in conflict with those grants.

(See appellant's brief, pp. 9, 10, 11.)

No. 100. **1846.**

June 4. The Sierra Mosca grant. By Governor Manuel Armijo. Reported No. 75. Suit No. 87 in Court of Private Land Claims. Confirmed by the Court of Private Land Claims, December 1, 1896. On appeal in the Supreme Court of the United States.

It was contended by the Government on the trial of this case that the petition, grant, and act of possession were forgeries. These documents purport to show that the grant was made by Governor Armijo to one petitioner, who stated that the tract contained fertile lands for cultivation, sufficient pasturage and waters, and everything else required and necessary for raising animals. The petition was dated June 3, 1846, the granting decree was dated June 4, and directed the petitioner to apply to the proper justice to be placed in possession of the land "in entire conformity to the laws in the premises." Four days later the grantee was placed in possession of a tract of land which is represented on a sketch map filed by claimants in the the surveyor-general's office as containing 115,200 acres.

(Senate, Ex. Doc. 3, Forty-third Congress, first session, p. 8.)

No. 101. **1846.**

July 21. The Nuestra Sonora de los Dolores mine grant. By Jose Albino Chacon, judge of first instance. Reported No. 162. Suit 147 in Court of Private Land Claims. Rejected by Court of Private Land Claims September 5, 1896.

This was a grant of six mining claims to four persons, made under the mining laws then in force in the Mexican Republic.

Supreme Court of the United States.

No. 133.—October Term, 1900.

Joel Parker Whitney et al. Appellants, *vs.* The United States, Eloisa Bergere et al. } Appeal from the Court of Private Land Claims.

[April 15, 1901.]

The appellants in this case come here on appeal from a judgment of the Court of Private Land Claims rejecting their claim, which arose under a grant of land in New Mexico called La Estancia grant, consisting of some 415,000 acres, made in 1845 by Governor Armijo to one Antonio Sandoval, under whom they claim. Upon the trial it appeared that Sandoval in 1845 was a Mexican citizen of high distinction residing in the Territory of New Mexico. By petition, dated December 5, 1845, and presented on the 7th of that month, Sandoval petitioned the governor of New Mexico for a grant of land in the name of the supreme authority of the Mexican nation, the land being described in the petition, and the petitioner stating that it was vacant land in a condition of *mortmain*, and might be granted without prejudice to any third party. He stated in his petition that he had for the last thirty years and more been rendering services to the country, both by personal service and property, and without ever having been paid anything in the way of compensation for such services, and in consideration of all of which he asked and prayed the governor for the sake of justice to accede to his prayer. On December 7, 1845, Governor Armijo granted the petition, and placed the following memorandum thereon:

"This government being convinced of the valuable services Don Antonio Sandoval has rendered, and is now rendering the country, as well during the time to which he refers as also during the six years he served administering the prefecture of the second district, with the salary of one thousand five hundred dollars, of which not even a half real has been paid to him, the sum due him amounting to nine thousand dollars, and the statements in this petition being true, I do, in the exercise of the power in me vested by the laws, and also in consideration of all the premises and as a just title acquired, make to him the grant for the land he solicits, with all the dimensions and pasture land he asks, that he may enjoy the same in the name of the supreme government of the Mexican nation and under my concession, free and exempt from all tax or tribute.

Manuel Armijo."

Following the memorandum is a written certificate signed by the comptroller of the departmental treasury of New Mexico and acting treasurer of the same, certifying that Antonio Sandoval, during the period of forty

years, as appears from the record of the books of the treasury, has been serving the nation as a military and civil officer, and has loaned during that time numerous sums of money to the nation without receiving one-half real interest, and that there are now due him large sums as appears from the interest entries in the office and the evidences in possession of the parties interested on account of salaries and loans. Then follows the written certificate of Jose Baca y Ortiz, dated at La Estancia, December 15, 1845, in which he certifies that on that day he, accompanied by witnesses, placed Antonio Sandoval, *through his agent, Juan Antonio Aragon*, in juridical possession of the granted lands.

On July 8, 1848, Sandoval conveyed, by a deed of gift, the above described land to his nephew, Gervacio Nolan. This conveyance was acknowledged before the clerk of the county of Bernalillo, Territory of New Mexico, on July 8, 1848.

After the passage of the act of Congress, July 22, 1854, establishing the office of surveyor general in New Mexico, and on July 12, 1855, Nolan, the grantee of Sandoval, filed in the office of the surveyor general the papers above described, upon which he asked for the approval of that officer, and that he would recommend the grant for confirmation by Congress. Nolan died in 1858, before anything was done in regard to his petition. After his death his widow and children, by guardian, applied to the surveyor general, stating the fact of his death, and asked that the grant of the land should be confirmed to them as the present owners, and that a patent should be issued in their favor. Testimony was taken in 1861, relating to the petition, before the then surveyor general, but no final action was had in the case until it was submitted to Surveyor General Proudfit, who, on January 4, 1873, reported that in his opinion the title was perfect in the legal representatives of Nolan, deceased, and recommended that it be confirmed by Congress. Congress did not however confirm the grant, and under instructions from the Commissioner of the General Land Office the case was re-examined by Surveyor General Julian, who, in a report to the Commissioner, dated July 21, 1886, recommended the rejection of the claim by Congress for the reasons therein stated by him. This report was concurred in by the Commissioner, and by him transmitted on December 17, 1886, to Mr. Lamar, Secretary of the Interior. No further action seems to have been taken. The appellants herein take title from the widow and children of Nolan by conveyance dated September 23, 1880.

Mr. Justice PECKHAM, after making the above statement of facts, delivered the opinion of the Court.

The judges of the court below, while rejecting the claim of appellants, differed widely in regard to the grounds upon which such rejection should be placed. Mr. Justice Sluss, in an opinion that was concurred in by Mr.

Justice Fuller, said that the case was to be decided under the Mexican colonization law of August 18, 1824, and the regulations of November 21, 1828, which in his judgment had not been totally repealed by the law of April 4, 1837, and the grant, being subject to the first named law and to the regulations above mentioned, could not be valid for a greater quantity than eleven square leagues, nor become a perfect title until the grant had been approved by the departmental assembly.

It appears that eleven square leagues would embrace about 50,000 acres of land, and hence a grant of 415,000 acres would, under the law and regulations, be far beyond the power of the officials to make to any one person.

Mr. Justice Murray, while concurring in the conclusion to reject the claim, was of opinion that the law of 1824 and the regulations of 1828 had been entirely repealed by the law of April 4, 1837, but he did not think that the governor had the power merely as representative of the supreme executive to make the grant, and there was no evidence of any special power having been delegated to him.

Mr. Chief Justice Reed also concurred in the conclusion to reject the claim but did not agree with all that was said in the opinion of Mr. Justice Sluss, being himself of opinion that, while the law of 1824 was repealed by that of 1837, the regulations of 1828 were not thereby wholly repealed. He thought that the grant in this case was made, not under the law of 1824, but under the regulations of 1828; that the law regulated the matter of the disposition of the public lands *within the States*, and conferred upon the executive the power to make all necessary regulations for the disposition of such lands *within the Territories*, of which New Mexico was one, and the question in his judgment was, not whether the law remained in force but whether the regulations continued operative when the grant was made; that it was manifest the law which governed the matter within the States might be repealed without at all affecting the regulations established by the executive governing the same subject within the Territories. Being subject to those regulations, we suppose the quantity of the grant was an insuperable bar to its validity, in the view of the Chief Justice.

Mr. Justice Stone dissented from the decree rejecting the claim, and was of opinion that the making of the grant in question was within the competency of the supreme executive, and that Governor Armijo was his appropriate ministerial agent in its execution.

In reviewing questions arising out of Mexican laws relating to land titles we recognize what an exceedingly difficult matter it is to determine with anything like certainty what laws were in force in Mexico at any particular time prior to the occupation of the country by the American forces in 1846–1848. This difficulty exists because of the frequent political changes which took place in that country from the time the Spanish rule was first thrown off down to the American occupation. Revolutions and counter-revolutions,

empires and republics, followed each other with great rapidity and in bewildering confusion, and emperors, presidents, generals and dictators, each for a short period, played the foremost part in a country where revolution seems during that time to have been the natural order of things. Among the first acts of each government was generally one repealing and nullifying all those of its predecessors.

If, however, the validity of this grant were to be decided under the provisions of the colonization law of 1824, and the regulations passed in 1828, it seems to us there would be little difficulty in determining that the appellants had failed to make out their case. The provisions of the act of 1824 were plainly violated in this grant, because it contained more than eleven square leagues. This was prohibited by that law. (Reynolds' Compilation of Spanish & Mexican Land Laws, pp. 121, 122, sec. 12; Hall's Mexican Law, p. 149, sec. 498.)

And also, before the grant in question was made, there had been a previous one, dated November 28, 1845, conveying to Sandoval the land embraced in what was called the Bosque del Apache grant, which also exceeded eleven square leagues in extent, the grant being made by the same governor (Armijo), although juridical possession was not delivered until March 7, 1846. Having obtained a grant of more than eleven square leagues before he made his petition for the grant now in issue, he had acquired all that the law of 1824 permitted him to take, and the subsequent grant was not valid. (*United States* v. *Hartnell*, 22 How. 286.)

Another objection to the title is that there is no record of its existence in the archives of New Mexico. Although no question is made as to the genuineness of the papers set forth in the foregoing statement of fact, namely, the petition of Sandoval, its allowance by Governor Armijo, the certificate of the comptroller and acting treasurer, and the certificate of the delivery of juridical possession by the justice of the peace, yet none of these came from the archives of the country, and there is no record that the departmental assembly ever concurred in the grant, as is necessary under the law of 1824. (Reynolds, p. 142, sec. 5.) If the approval of that body could not be obtained, the governor was to report to the supreme government, forwarding the proceedings in the matter for its consideration. (Sec. 6.) Nothing of this kind appears in the archives or in the records of the assembly. Nor has there been produced even from the hands of the claimants any approval of the grant by the assembly. No matter how formal and complete the written documentary evidence of title may be, yet when coming from private hands it is insufficient to establish a Mexican grant if there is nothing in the public records to show that it ever existed. (*Peralta* v. *United States*, 3 Wall. 434, 440.) Mr. Justice Davis, in delivering the opinion of the court in that case, said:

"The Mexican nation attached a great deal of form to the disposition of its lands, and required many things to be done before the proceedings could ripen into a grant. But the important fact to be noticed is, that a *record* was required to be kept of whatever was done. This record was a guard against fraud and imposition, and enabled the government to ascertain with accuracy what portions of the public lands had been alienated. *The record was the grant*, and without it the title was not divested. The governor was required to give a document to the party interested, which was evidence of title, and enabled him to get possession; but this 'titulo' did not divest the title, unless record was made in conformity with law."

The title here is incomplete because there is no evidence whatever of approval by the assembly, or, failing in that, any record of further proceedings to obtain the approval of the supreme government.

In *United States* v. *Teschmaker*, (22 How. 392,) Mr. Justice Nelson said, at page 405: "We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title; but it should be produced, or its absence accounted for to the satisfaction of the court."

In *Berreyesa* v. *United States*, (154 U. S. 623,) the court held that the case came within the principle of those cases in which it had decided adversely to claims made under alleged Mexican grants, all because it did not appear that a grant from the Mexican government had been "deposited and recorded in the proper public office among the public archives of the republic." See also *United States* v. *Ortiz*, (176 U. S. 422;) *United States* v. *Elder*, (177 Id. 104.)

In this case, as we have said, there is no record or mention of the case in the archives in New Mexico. The papers came from private hands, the claimant Nolan presenting them to the surveyor general in 1855, when he applied to that officer for his recommendation to Congress for a confirmation of the grant. That they have remained in the surveyor general's office since that time does not make them a record or an archive of the government within the meaning of those cases above cited.

The certificate of Baca, the justice of the peace, certifying to his delivery of juridical possession to Sandoval on December 15, 1845, bears the endorsement that it was recorded in book letter B, pages 166, 167, and is certified to by the recorder Donaciano Vigil at Santa Fe, November 17, 1849. This book has been lost, but it was kept in obedience to a provision contained in what is called the "Kearney Code," providing for the recording of papers brought to the recorder by parties, which affected or constituted their title to lands they claimed to own. The book was not an original archive of the country. The certificate of record endorsed upon the paper shows that it was produced from private hands, and no presumption that any papers relating to this grant were recorded in or placed among the archives of the government of New Mexico arises from the fact that a record of this paper was made pursuant to the provisions of

the Kearney Code. There is no proof that this paper or any document connected with the grant under discussion had ever been delivered to the recorder for record and retained by him in his official custody from 1849 until it had been turned over to the custody of the surveyor general upon the creation of that office in 1854. The language contained in the report of Surveyor General Proudfit would negative any such presumption, because he says that the papers were filed in his office July 12, 1855, by Gervacio Nolan, the claimant himself. The fact however would have been immaterial in any event. The paper would not have been a document found in the records or archives of New Mexico, because it came from private hands and was by the claimant delivered to the recorder, and his keeping it thereafter and turning it over to the surveyor general would not have constituted it a record or a paper found among the archives and turned over to that officer.

It does appear from the evidence that there may have been some loss or destruction of papers which constituted a part of the records or archives of New Mexico in the possession of the territorial librarian in the year 1869 or 1870. The history of the transaction is stated by the witness Bond, and it would seem from his account that it was extremely doubtful whether any really important papers relating to grants of land had in fact been destroyed, although some of them may have been. Unless we should regard this possibility as a sufficient excuse in every case of a land grant in New Mexico for the failure to show any archive title or record of title of such grant, it cannot be admitted in this particular case. That it is not a sufficient excuse has been decided by this court. (*United States, Applts.* v. *Castro et al.*, 24 How. 346.) The appellants did prove by the witness Tipton, whose great experience in connection with the surveyor general's office in New Mexico is well known, that he had not seen in the archives of the government any record of grants made by Armijo or signed by him, although the witness knew nothing about the condition of the archives prior to the spring of 1876. We think this is insufficient to show the destruction of all archives pertaining to grants made by Armijo about this time (1845).

Taking all these objections to the title into consideration we think it clear that no case for confirmation under the colonization law of August, 1824, and the regulations of 1828 was made out.

In the early history of these Mexican land titles it had been supposed that the colonization law and the regulations above mentioned were all that were in force in Mexico after their dates. (*United States* v. *Cambuston*, 20 How. 59, 63; *United States* v. *Vallejo*, 1 Black, 541, 552; *United States* v. *Vigil*, 13 Wall. 449, 450.)

Subsequently, the claim was urged that that law and the regulations had been repealed by virtue of the law of April 4, 1837. (Reynolds, p. 222; see also law of April 17, 1837, p. 224 of Reynolds' Compilation.)

The claim was urged by way of argument by counsel, and referred to by Mr. Justice Lamar in his opinion in *Interstate Land Company* v. *Maxwell Land Company*, (139 U. S. 569, 578.) Again, in *United States* v. *Coe*, (170 U. S. 681, 696,) Mr. Justice McKenna, in speaking of the colonization law of August 18, 1824, said that "by a law passed April 4, 1837, all colonization laws were certainly modified and may be repealed."

The weight of the argument of counsel for appellants rests upon the assumption and assertion that this grant was not made under the law of 1824 or the regulations of 1828, nor under the law of 1837 above mentioned, but that it was made by the supreme executive of Mexico through his trusted minister and agent, Governor and Commandant General Manuel Armijo, who in making such grant was not restricted by any prescribed rules or limitations. This broad proposition counsel has sought to maintain by reference to the various acts of Mexico subsequent to 1828, and up to the making of this grant.

Treating Armijo as the *alter ego* in New Mexico of the supreme executive of Mexico, and claiming for the latter full and absolute power to dispose of the public lands in accordance with the views held by that officer, counsel ask that the same presumption of the validity of grants made by Governor Armijo should be indulged, which was accorded to the grants of certain officials in the Louisiana and Florida cases, herein referred to. We think no such presumption ought to obtain in this case.

In *United States* v. *Cambuston*, (*supra*,) Mr. Justice Nelson, in speaking of the difference between the cases involving Spanish titles in the Territories of Louisiana and Florida, such as *United States* v. *Arredondo*, (6 Pet. 691, 729;) *Delassus* v. *United States*, (9 Pet. 117, 134;) *United States* v. *Peralta*, (19 How. 343, 347,) and those which involved Mexican titles, said:

"But no such presumptions are necessary or admissible in respect to Mexican titles granted since the act of the 18th of August, 1824, and the regulations of the 21st of November, 1828. Authority to make the grants is there expressly conferred on the governors, as well as the terms and conditions prescribed, upon which they shall be made. The court must look to these laws for both the power to make the grant and for the mode and manner of its exercise, and they are to be substantially complied with, except so far as modified by the usages and customs of the government under which the titles are derived, the principles of equity, and the decisions of this court. (17 How. 542.)"

The case was decided under the act of Congress of the 3d of March, 1851, to adjudicate private land claims arising under our treaty with Mexico, and the decision, as is seen from the above extract, proceeds upon the assumption that the law of 1824 and the regulations of 1828 furnished the rule of decision. Their existence is denied by counsel for the appellants, and it is upon the assumption of their non-existence that his argument

rests. Assuming, however, that the law and regulations were not in force, we still cannot base a presumption that the governor was authorized by the supreme executive to make the grant simply because the governor exercised the power. The difference between the act relating to Spanish titles to lands above referred to and the act of 1891 under which Mexican titles to lands have been examined by the Court of Private Land Claims, and by this court, is clearly recognized and enforced in *United States* v. *Ortiz*, (176 U. S. 422.) In that case it was held that under the provisions of the act establishing the Court of Private Land Claims, (sec. 13, act of March 3, 1891, c. 539; 26 Stat. 854,) the burden of showing the existence of the grant was upon the person claiming under it, and that no presumption of authority on the part of the granting officer existed, as in the case of the above mentioned territories. This last case was approved in the *Elder Case*, (177 U. S. 104,) where it was again held that the claimant must prove his title by a preponderance of evidence, and no presumption of authority existed.

And in *Hayes* v. *United States*, (170 U. S. 637, 647, 648,) this difference is also pointed out by Mr. Justice White. Speaking of the act of 1891, he said:

"But in the act of 1891 the court is required to be satisfied not simply as to the regularity *in form*, but it is made essential before a grant can be held legally valid that it must appear that the title was 'lawfully and regularly derived,' which imports that the court must be satisfied, from all the evidence, that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified." (Page 648.)

We are not satisfied that there was a general power on the part of the governor of a territory at any time to make a valid grant of lands in all cases and simply as the agent of the supreme executive, such as is contended for by counsel for the appellants. No evidence that the governors legally had that power has been given other than the fact that they sometimes exercised it. It appears, however, that for some years prior to 1845 grants of land were made not only by governors, but even by alcaldes, prefects, justices of the peace, and by judges of first instance, so that, in the language of one of the judges of the court below, "it was a poor officer, indeed, who did not assume to be able to dispose of the public domain belonging to the nation." Hence the reluctance to presume the validity of a power because of its exercise. It may be that in some particular period of those disturbed times, and up to 1846, the supreme executive of the Mexican nation exercised arbitrary and irresponsible power, and granted the public lands according to his own views of what was proper and needful for the nation, and upon occasion delegated such power to a governor, but the exercise of that kind of power was in violation of the ordinary and general laws which had been adopted by the nation, and no presumption that the supreme executive had

delegated his power to a governor or political chief of a province or state can be indulged for the purpose of upholding a grant of land made by the governor in violation of the constitution or laws which had theretofore been adopted or passed.

Counsel also urges that such power is to be found in the "Bases of 1835," the "constitution of 1836," and the "Bases of 1843," not to speak of the "Plan of Tacubaya," and the attending laws or decrees, in which it is contended there are specific provisions plainly expressive of the intimate representative and ministerial relations which the governor and commandant general bore the supreme executive. It might be assumed that the relations between the supreme executive or Dictator and his governors and commandants general were intimate and confidential, but such relations of intimacy and confidence do not take the place of an actual delegation of power to the governors to make grants of this description; nor do we find any such delegation in the various provisions contained in the Bases of 1835 or of 1843 and the constitution above referred to. The governor does not assume to make the grant by virtue of any special or general delegation of authority to him by the supreme executive, but he asserts in his grant above quoted that he makes it "in virtue of the power in me vested by the laws," &c.

Section 10 of the "Bases for the New Constitution," law of October 23, 1835, (Reynolds, p. 201,) simply provides that the executive power of the departments shall reside in the governors in subordination to the supreme executive of the nation. The same law divides the national territory into departments on the basis of population, &c., and provides that there shall be governors and departmental boards for the government of these departments. This obviously gives no authority to the governor to make a grant of the public lands within his territory according to his own unrestrained views of propriety. It does not assume to alter the general laws in relation to the disposition of the public lands or of the manner in which they shall be disposed of. The same may be said regarding the constitution of 1836, which entrusts the interior departments to the governors in subordination to the general government. (Reynolds, pp. 203, 204.) The law of March 20, 1837, (Reynolds, p. 211, subdivision 17, p. 215,) provides that the governors shall be the usual channels of communication between the supreme powers of the nation and the departmental counsels (juntas), and between the latter and the officials of the department. This provision does not tend to show the power contended for.

In fine, looking through the provisions to which our attention has been called by counsel, and without specific reference to each one of them, we may say in regard to all of them that we find therein nothing providing in terms or by inference for the general delegation of power by the supreme executive (assuming that he himself had it) to the various governors to

make a grant like this. The appellants are, therefore, compelled to show some specific delegation of authority from the supreme executive for making such a grant. If that were shown, we might say, following the case of *United States* v. *Castillero*, (23 How. 464,) the other conditions therein mentioned being fulfilled, that the grant was a valid one and ought to have been confirmed by the court below, and within the case of *United States* v. *Osio*, (23 How. 273,) if there had been a special delegation of power it would follow that the conditions contained in such special delegation must be fulfilled before title passed. The necessity for showing what the special power was becomes evident from these cases.

What we have already said as to the absence of all record in the archives, relating to the grant, applies to the case as here considered.

Looked at from any point of view we do not think the appellants have borne the burden of showing the validity of their grant, either directly or by facts from which its validity could be properly inferred within the cases already decided by this court. The judgment of the court below must, therefore, be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.